



# COMPENDIUM OF LAWS AND POLICIES

Legal and Policy Issues  
Affecting Civil Society  
Organizations in Tanzania

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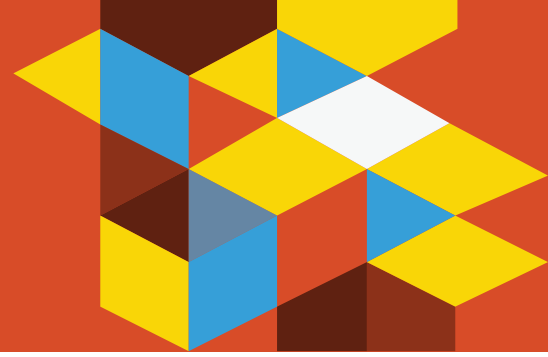
# LIST OF ABBREVIATIONS AND ACRONYMS



<b>ACPHR</b>	African Court on Human and People's Rights	
<b>Adv.</b>	Advocate of the High Court	
<b>AG</b>	Attorney General	
<b>AGM</b>	Annual General Meeting	
<b>AIA</b>	Access to Information Act of 2016	
<b>AMREF</b>	African Medical and Research Foundation	
<b>APEA</b>	Applied Political Economy Assessment of the Freedom House	51
<b>Cap.</b>	Chapter of the Laws of Tanzania	52
<b>CBOs</b>	Community Based Organizations	52
<b>CHRAGG</b>	Commission for Human Rights and Good Governance	52
<b>CIDA</b>	Canadian International Development Agency	53
<b>COSTECH</b>	Commission for Science and Technology	53
<b>CPJ</b>	Committee to Protect Journalists	54
<b>CRT</b>	Community Resource Centre	
<b>CSOs</b>	Civil Society Organization(s)	
<b>CSS</b>	Civil Society Sector	
<b>DANIDA</b>	Danish International Development Agency	
<b>DDT</b>	District Development Trust	55
<b>Dr.</b>	Doctor	55
<b>EACJ</b>	East African Court of Justice	55
<b>FBOs</b>	Faith Based Organizations	55
<b>FCS</b>	Foundation for Civil Society	58
<b>G.N</b>	Government Notice	60
<b>HRDs</b>	Human Rights Defenders	60
<b>ICNL</b>	International Centre for Not-for-Profit Law	
<b>INGOs</b>	International NGOs	61
<b>KKKT</b>	Evangelical Church of Tanzania	
<b>LAPs</b>	Legal Aid Service Providers	61
<b>LAS</b>	Legal Aid Services	62
<b>LHRC</b>	Legal and Human Rights Centre	62
<b>LSF</b>	Legal Service Facility	62
<b>MCT</b>	Media Council of Tanzania	
<b>MSA</b>	Media Services Act of 2016	
<b>NACONGO</b>	National Council of NGOs	
<b>NBS</b>	National Bureau of Statistics	
<b>NEC</b>	National Electoral Commission	
<b>NGOs</b>	Non-Governmental Organizations	
<b>NIMR</b>	National Institute for Medical Research	
<b>NLAAB</b>	National Legal Aid Advisory Board	

<b>No.</b>	Number	
<b>NORAD</b>	Norwegian Agency for Development Cooperation	
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights	
<b>PAYE</b>	Pay as You Earn	
<b>PINGO's Forum</b>	Pastoralists Indigenous NGOs Forum	
<b>PWDs</b>	Persons with Disabilities	
<b>REPOA</b>	Research on Poverty Alleviation	
<b>RITA</b>	Registration, Insolvency and Trusteeship Agency	
<b>RLAPs</b>	Registrar of LAPs	
<b>SACCOS</b>	Saving and Credit Cooperative Society	
<b>SAM</b>	Social Accountability Monitoring	
<b>SAPs</b>	Structural Adjustment Programs	
<b>SIDA</b>	Swedish International Development Cooperation Agency	
<b>SWO</b>	Social Welfare Officer	
<b>TAWIRI</b>	Tanzania Wildlife Research Institute	51
<b>TCRA</b>	Tanzania Communication Regulatory Authority	52
<b>TEC</b>	Tanzania Episcopal Conference	52
<b>TFDA</b>	Tanzania Food and Drugs Authority	52
<b>THRDC</b>	Tanzania Human Rights Defenders Coalition	53
<b>TMB</b>	Treaty Monitoring Bodies	53
<b>TRA</b>	Tanzania Revenue Authority	53
<b>TZS</b>	Tanzanian Shillings	54
<b>UDHR</b>	Universal Declaration of Human Rights of 1948	
<b>UN</b>	United Nations	
<b>UNAIDS</b>	United Nations Programme on HIV/AIDS	
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization	
<b>UNICEF</b>	United Nations Children's Fund	55
<b>URT</b>	United Republic of Tanzania	55
<b>USAID</b>	United States Agency for International Development	55
<b>VAT</b>	Value Added Tax	55
<b>VICOBA</b>	Village Community Banks	58
<b>WTT</b>	Withholding Tax	60
<b>ZLS</b>	Zanzibar Law Society	61
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# PREFACE



The Tanzania Human Rights Defenders Coalition (THRDC) presents the second volume of the compendium. This volume focuses on the legal and practical issues of concern facing the Civil Society Sector (CSS) in Tanzania, particularly the Civil Society Organizations (CSOs), which are more directly on the ground pursuing human rights advocacy interventions. The first volume of the compendium focused on the laws, policies and regulations governing CSOs in Tanzania Mainland and Zanzibar.

It should be noted that, THRDC is the first and only human rights defender (HRD) organization which addresses rights of defenders (HRDs) in specific and comprehensive ways. The HRDs include individual persons and CSOs such as non-governmental organizations (NGOs) and the media. The core functions of THRDC since its inception in 2012 have been to address the rights of HRDs in Tanzania through Advocacy, Capacity building and the Protection of HRDs by providing legal aid and counseling. The two compendiums are resourceful tools for THRDC's members and other CSOs and the whole family of CSS in Tanzania.

While the first compendium offers general legal compliance knowledge for CSS actors, the second one highlights some practical concerns affecting the CSOs in the course of complying with the legal requirements on CSS in Tanzania. Knowledge of these legal requirements will enable them to take precautions and also galvanize them to take action to advocate for changes of some of the reprehensible laws and regulations hindering the smooth implementation of their work. Therefore, the second compendium acts as both resource material and an advocacy tool for an improved civic space (working environments) of CSS in Tanzania, and rights of HRDs in Tanzania.

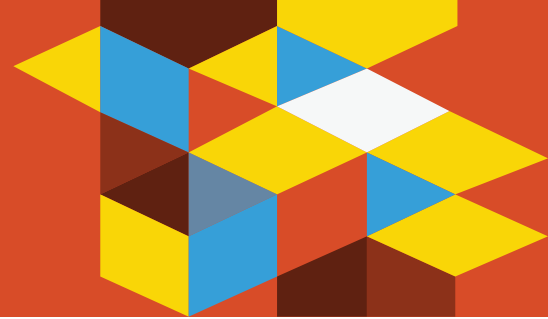
The idea to have these compendiums was suggested and endorsed on the 13th and 14th of October 2017 when CSOs in Tanzania conducted a self-reflection meeting to assess the challenges and opportunities in the CSOs sector in Tanzania. The event was held in Arusha, whereby more than 70 CSOs attended the forum. One of the meeting's resolutions was on the need to compile a compendium of all laws, policies, regulations and rules governing the operations of the CSO sector in Tanzania. Consequently, THRDC in collaboration with the Foundation for Civil Society (FCS) engaged consultants for the development of this compendium the first of its kind in the country.

As was the case for the first volume of the compendium, this one too was developed after a thorough desk review of the laws and other documents including consultations with various stakeholders in the field of law, human rights, good governance, corporate practices and organizational managements

The readers are advised to read both volumes of the compendium as they are linked to each other in terms of form and content. Compendium volume one has two versions, one covering Tanzania mainland and the other one covering Zanzibar.



# EXECUTIVE SUMMARY



This compendium addresses legal, policy and practical gaps/challenges affecting the civil society organizations in Tanzania. It is a companion of another compendium which dealt with the laws, regulations and policies governing CSOs in Tanzania. It is divided into six chapters. Chapter one deals with the general introduction and background information. Chapter two deals with the gaps and challenges of the legal and policy framework governing the formation and operations of CSOs in Tanzania. It expounds on the Constitutional foundation of the CSOs existence in Tanzania as well as the four main laws of which CSOs are formed. These are; the Societies Act, the NGOs Act, the Trustee Incorporation Act and the Companies Act. Chapter three looks into the challenges of the laws governing research and publications in Tanzania. It provides an analysis about the laws such as the Statistics Act, 2015, Cybercrimes Act, 2015, Media Services Act, 2016, the Online Content Regulations, 2018 among others and how it impacts on the conduct of research work and inhibits press freedom and freedom of expression through the media, social media and other communication channels. Chapter four is on adverse effects of the penal laws to CSOs in Tanzania. Chapter five details hchallenges in other laws such as tax laws and regulations which deal with the governance and operations of CSOs in Tanzania. The last chapter (chapter six) deals with challenges associated with legal and regulatory framework governing particular CSOs such as the Tanganyika Law Society (under the Tanganyika Law Society Act), and the Legal Aid Providers (under the Legal Aid Act).

Some of the notable challenges under the identified laws and policies are double registration, issues of compliance, internal interference of CSOs affairs, centralized operations of most of the regulatory organs, criminalization of CSOs and office bearers, bureaucracy, restrictions on freedom of expression/surveillance, the state of impunity, and excessive regulation to mention a few. These and many others have been to a greater extent a stumbling block towards CSOs operations and growth. Several recommendations are also proposed in the compendium and these include but not limited to amendment of all the provisions of the laws which are restrictive to CSOs operations.

# CHAPTER ONE

## GENERAL INTRODUCTION AND BACKGROUND INFORMATION



### 1.1 INTRODUCTION

This chapter covers the meaning and types of Civil Society Organizations (CSOs) in the Tanzanian context and the reasons for the development of this second volume as well as the first volume of compendium. A large part of this chapter's contents are also reflected in the first volume and this is because these are companion documents – the first volume focusing on the legal framework governing CSOs while this second volume provides an analysis on how the application of the said legal framework have affected the smooth and affective operations of CSOs in Tanzania.

### 1.2 CIVIL SOCIETY AS ONE OF THE STATE'S SECTORS

As a norm in any modern society, including Tanzania, there are three pillars of State commonly termed as 'sectors.' These are Public Sector; Civil Society Sector; and Private Sector.

Each of these pillars or sectors has sub-sectors. Besides, there are other 'sectors' which do not necessarily fall within the three broad groups. These include the general public, development partners and international organizations.

The fourth group (termed as other sectors), interplays between all these three sectors. The groups are explained below.

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<sup>1</sup> The information below is copied from CHRAGG's Stakeholders Engagement Strategy of 2018-2022, which was also developed by Adv. Clarence Kipobota, the writer of this compendium.



**Figure 1: Three Common Sectors in a Modern Society**

### 1.2.1 Public Sector

**The public sector is comprised of the three organs of the States namely:-**

- i) Central government including the ministries, departments, institutions and state agencies such as the law enforcement (Police, Directorates of Prosecutions, Attorney General Chambers, Anti-Corruption Bureaus, Prisons, Zanzibar's Special Forces, etc); commissions and councils including on human rights, public ethics, communication, elections, law reforms, etc; and, offices of the regional and district commissioners.
- ii) Local Government Authorities (LGAs).
- iii) Judiciary.
- iv) Parliament of the United Republic of Tanzania (URT) and House of Representatives of Zanzibar.

### 1.2.2 Civil Society Sector

The Civil Society Sector includes CSOs; non-governmental organizations (NGOs); trustees; Community Based Organizations (CBOs); Faith Based Organizations (FBOs); National NGOs Council (NACONGO); Trade Unions (of all sub-sectors); employers' associations; all forms of media (mainstream community, social and alternative media); and, academic institutions. It includes also international NGOs (INGOs) operating in Tanzania.



### 1.2.3 Private Sector

This sector is comprised of small, medium and large enterprises engaging in different economic activities. The actors include enterprises engaging in trade, extractive, tourism, telecommunication, transportation, manufacturing, processing, environmental conservation, livestock-keeping and other economic sub-sectors. It also includes local and international business ventures operating in Tanzania.

### 1.2.4 Others Actors

Other actors include the individual persons (e.g HRDs); general public; unregistered civil rights and economic groups; United Nations (UN) agencies such as the UNDP, UNICEF, UNESCO, UN Women and UNAIDS; UN human rights structures including the Office of High Commissioner for Human Rights (OHCHR), special rapporteurs, and Treaty Monitoring Bodies (TMBs); embassies and their ground agencies including USAID, DANIDA, SIDA, CIDA, NORAD, Swiss Aid, and China Aid; and international tribunals especially the African Court of People and Human Rights (ACPHR) and East African Court of Justice (EACJ).

## 1.3 EVOLUTION OF CSOs: ITS STRENGTHS AND VULNERABILITY

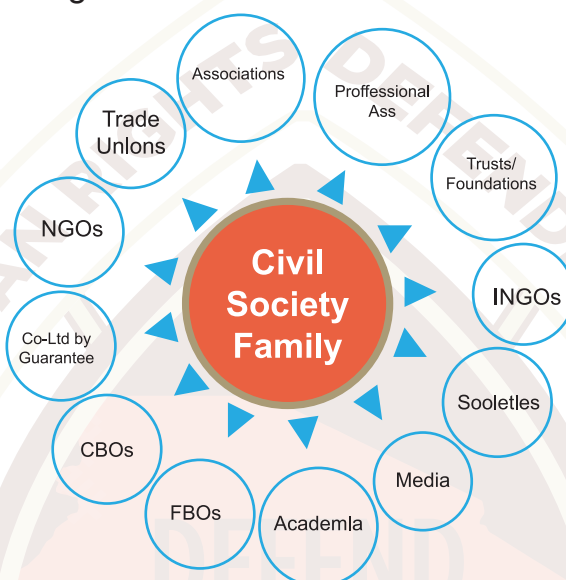
The CSOs as one of the sectors as mentioned earlier, has been in existence over four decades (more than 40 years) now. Therefore, it is relatively 'new' if compared with other sectors mentioned above. The statistics suggests that, its growth is high in terms of number; geographical coverage; level of engagement between themselves and other sectors; and advocacy issues to pursue.

#### **Practical Issue # I: Presence and Role of CSOs not been Appreciated**

The said growth trend has also expanded their roles, responsibilities and position within they are serving. However, its existence has not been much appreciated or well understood especially by the public sector – the reason why of recent years, the said public sector has launched some complicated and repressive laws that are detrimental to the survival and operations of the CSOs in Tanzania.

Some literature suggests that Tanzania has a large civil society sector compared to many other developing countries. The sector, occupies an estimated 2% of the economically active population <sup>2</sup>.

A large part of the sub-sector (CSO) is dominated by NGOs. That is, about 44% of sector's members are registered NGOs. Some 75% of the NGOs are registered under the *NGOs Act of 2002* (Tanzania Mainland); and more than 70% of Zanzibar's NGOs under the *Societies Act 1995* (Kepa, 2015). It should be noted that, the sub-sector, CSOs, is one of the family members of the Civil Society Sector (CSS) as explained earlier above. The NGOs, international NGOs (INGOs), trustees and CBOs are normally regarded as members within the CSOs sub-sector because of their commonalities in terms of objectives, intervention strategies and other factors. Figure 2 below clarifies further other members of CSS.



**Figure 2: CSOs Family Tree**

It is a concern that, less than 16% of the NGOs operators are rural dwellers. This raises a question on how to engage with rural population especially by large CSOs, which are predominantly based in Dar es Salaam, Mwanza, Arusha and Unguja. Moreover, it is a practical concern that, the size and position of CSOs depend much on donor funding and interests. For instance, over 90% of the NGOs are entirely donor funded and only 20% of CSOs' incomes come from (local) philanthropy (REPOA, Undated).

The current situation on how the CSOs operate especially in terms of strengths and vulnerabilities has historical reasons. Sources indicate that, the historical development of CSOs in Tanzania reflects the changing social, economic and political environment that has taken place from the colonial period to the present day (Kiondo, A. and Mtatifikolo, F. (1999)). However, during the colonial period, the emergence and formation of CSOs was influenced by an attempt by the colonial masters to engineer significant changes in the economic roles of their colonies while exerting control over social and political processes in the colonies.

<sup>2</sup> CIVICUS Report, 2011

Major changes on evolution of CSOs in Tanzania happened from 1980s. The changes were influenced by the adoption of Structural Adjustment Programs (SAPs) by the Tanzanian government. Ever since, the role of CSOs in development and service delivery increased dramatically, encouraging explosive growth in the non-government sector (REPOA, 2007). The sector started to be recognized as an important element in the governance domain.

From 1990's CSOs became more active in filling gaps as the government retreated from its front-line service role due to severe budgetary restrictions. As people realized the willingness of donors to give direct support to NGOs and Community-Based Organizations (CBOs), the number of organizations exploded. Thus, while the decade prior to liberalization (1971 – 1980) saw the formation of only 18 NGOs (registered with TANGO), the decade of initial liberalization efforts (1980 – 1990) saw the formation of 41 new CSOs. By 1992 there were about 100 District Development Trusts (DDT) and other standard NGOs and CSOs, by 1999 there were about 9,000.

SAPs were not the only reason for the formation of NGO's. The women's movement in the country was pushed by the development of the women's movement worldwide which had an impact at the local level. The 1995 UN Conference for Women and Development that was held in Nairobi, was a major catalyst for the formation of organizations such as TAMWA, TGNP, TAWLA, Medical Women's Association of Tanzania (MEWATA) etc. There is an appealing need to do a thorough desk study on the upsurge in the formation of NGO's other than the fact that SAPs did push communities to organize for survival.

Perhaps the political environment was also favorable. The right for citizens to organize was gaining coinage and supported by government policies. Remember the slogan "anything that gives citizens the capacity and right to decide on their own affairs is a revolutionary act although it doesn't add to them anything for survival or wealth"

#### **1.4 MANAGEMENT AND CONTROL OF CSOs**

Despite the rapid growth and development of the CSOs sector from 1990s, there was no proper coordination and self-regulation mechanism in place. Other challenges included presence of cumbersome registration processes; existence of CSOs registered under other laws but operating as NGOs; lack of proper information on registration procedures; and, experiences to run CSOs as formal corporate institutions.

### Practical Issue # II: CSOs Still Struggle to Claim own Position as Matured Sub-Sector

This trend poses a challenge of CSOs to claim their OWN position and act as one voice especially for public interest issues. The experience on the grounds shows that, the growth age of CSOs has created more challenges than solutions to the sector. Due to donor dependence syndrome, scramble for resources has been high and in most cases to the detriments of survival of weak CSOs. Moreover, the scramble is intensified further by the current trend whereby, some of the traditional donors have now established their home-grown 'sub-grant making' organizations operating in the country. Such organizations have financial muscles and are increasingly doing works which were supposed to be undertaken by local CSOs. The CSOs fail to control the situation as they; generally, lack self-control mechanisms after most of its networks including the National NGOs Council (NACONGO) have failed to operate more effectively as anticipated.

Apparently, due to lack of self-control, the government machineries (public sector) remained to be controller of this (civil society) sector. The State maintained its control it had since independence period. During the time (between 1960s and 1980s), CSOs operated as autonomous organizations or societies around labour and peasantry (cooperatives); but, they were gradually integrated into the mainstream of the State machinery (as re-organized affiliates of the then ruling political party). During that time, expansion of free civil society organization was restricted, for instance, between 1961 and the late 1970s only 7 CSOs were formed. The number rose to eighteen towards the end of the 1980s as pointed out earlier.

The growth and maturity of the civil society sector did not graduate it from direct State's control. Instead, there has been an increase of the control through sectoral legislation and regulations, including the recent ones formulated in October 2018 requiring all NGOs to disclose their sources of finance, planned activities and submission of periodical reports to the government.

### Practical Issue # III: Overdue Control of CSOs by the State without Consultations

The recent orders or amendments, like it was in the past, are issued without prior consultations with the CSOs even though there is NACONGO and other networks coordinating some of the CSOs. The sectoral laws recently enacted (between 2015 and 2018) are on statistics, information, cybercrimes and online contents. They have some provisions which restrict the operation of CSOs in Tanzania – as it is discussed in details in subsequent chapters of this compendium.

## 1.5 MEANING OF CIVIL SOCIETY

In this compendium, the term 'civil society' is confined to its narrow sense of 'not-for-profit' organizations, which therefore include the following types of organizations:-

- i) Membership based organizations, trusts, NGOs and CBOs.
- ii) Voluntary and self-help groups, community based groups and societies.
- iii) Social movements and networks of organizations, professional associations, foundations and non-profit companies.
- iv) Faith based organizations.
- v) Research institutes working in economic and policy analysis.
- vi) Non-profit media organizations.



It excludes other organizations which are often included in the broad definition of the term civil society, including:-

- i) Trade unions.
- ii) Private sector associations.
- iii) Employers' associations.
- iv) Co-operatives.
- v) Media.
- vi) Academia.

For as much as these entities have a great role to play in civic sector, they do not form part of this compendium. This compendium deals mainly with NGOs, FBOs, Associations, Trusts, CBOs and professional associations because of their commonality in operational characteristics, including, their positions or presence in public life; their work or function which is representing and supporting pluralism for sustainable development and inclusive growth; and, they generally embody a growing demand for transparent and accountable governance.

## **1.6 ESSENCE AND OBJECTIVES OF THE COMPENDIUMS**

### **1.6.1 Essence of the Compendiums**

On 13th and 14th of October 2017, more than 70 CSOs gathered in Arusha for a two-day CSOs self-reflection meeting. It was a meeting to, among other things, celebrate 30 years of operations. During this meeting, representatives from government, academicians and other stakeholders had an opportunity for joint self-reflection. During the meeting, various recommendations were made for the smooth operation of the sector. One of the recommendations was the need to compile a compendium of all laws, policies, regulations and rules that govern the operations of the CSO sector in Tanzania. The THRDC in collaboration with the Foundation for Civil Society (FCS) engaged consultants for the development of the compendium which comprises of two volumes. The first compendium analyses and documents the laws governing CSOs in Tanzania; while, the second one is on practical issues of concern facing CSOs in the country.

The CSOs constituency in Tanzania is not yet well defined and there is yet to be an up to date list of CSOs in Tanzania. The organizations can be registered under various bodies of the government of Tanzania. Similarly, laws, regulations and policies governing establishment/registration and operation of CSOs in the country are diverse and at times it may be uncertain as to which particular law, regulation or policy is applicable in a given situation. Thus the first compendium provides for the particular laws, regulations and policies that shade some light on freedoms and other fundamentals guidelines in the CSOs and HRDs' registrations and operations; and, this compendium address issues pertaining applicability of those laws.

### **1.6.2 Objectives of the Compendiums**

The two compendiums are the first attempt to consolidate CSOs national laws, regulations, policies, rules and highlights on international standards and commitments relevant to civil society. Both are work in progress, for the main idea is; developing a comprehensive compilation of all laws, policies, regulations and rules that govern the operations of the CSO sector in Tanzania, identifying challenges faced by the sector and propose necessary legal reforms.

The second (this) compendium focuses on the identification and discussion of the challenges facing the CSOs in Tanzania and proposes the necessary legal reforms. From the above mentioned interventions, engagements and undertakings, it has become clear that the CSOs constituency needs more clarity and guidance around a number of issues relating to the establishment and operations of CSOs in Tanzania as addressed in this compendium.

To achieve this, this compendium allies the discussion with the contents of the first volume in discussing some practical issues pertaining:-

- i) Selected constitutional provisions relevant to CSOs in Tanzania.
- ii) Legal framework for the registration, operation and regulation of CSOs in Tanzania including, the applicability or enforcement of:-
  - (a) NGOs' Act of 2002.
  - (b) Trustees Incorporation Act, Cap. 318.
  - (c) Societies Act, Cap. 337.
  - (d) Companies Act, Cap. 212.
  - (e) Legal Aid Act of 2017.
  - (f) The laws governing taxes, research, publication, freedom of association, etc.

The readers are advised to read both compendiums as they are linked to each other in terms of form and contents.

# CHAPTER TWO

## GAPS AND CHALLENGES OF THE LEGAL AND POLICY FRAMEWORK ON CSOs IN TANZANIA



### 2.1 INTRODUCTION

The CSOs in Tanzania are governed by at least ten (10) different laws, apart from the *Constitution of the United Republic of Tanzania of 1977*. Some of the laws (most applicable ones) in this context are the *Non-Governmental Organizations Act of 2002, (NGOs Act)*; the *Trustees Incorporation Act, Cap. 318*; the *Societies Act, Cap. 337*; the *Companies Act, Cap. 212*; the *Legal Aid Act of 2017*; the *National Sports Council Act, Cap. 49*; the *Tanganyika Law Society Act, Cap. 307 (TLS Act)*; and, the *Co-operative Societies Act, Cap. 211*.

There are also several regulations formulated pursuant to the provisions of the principal legislation. Each law has its own implementation mechanism(s) or institution(s) and requirements. The enforcement institutions are administratively coordinated by different ministries and registrars. All these together form what is termed as the legal framework.

As it is the case for the first volume, for the purpose of this compendium, the focus is on some of the practical issues will be on the four main laws governing the CSO sector in Tanzania, namely; the *NGOs Act*; the *Trustees Incorporation Act*; the *Societies Act* and the *Companies Act*. This chapter has two parts. The first one discusses legal gaps of each of the four main laws and challenges of enforcement of the same (including the Constitution of Tanzania of 1977); and, the second part covers miscellaneous issues pertaining operationalization of the current legal framework.

#### **Practical Issue # IV: A need for more comprehensive and supportive policy framework**

It should be noted that, the legal and policy frameworks governing CSOs in Tanzania are comprised of the laws and policies as enforcement tools; and, the practices on how those tools are being applied. The two parts highlighted above have this logic of contextual analysis. The scope of this analysis is broadly on legal framework because it is mostly influencing the work of CSOs. Therefore, policy framework is briefly reflected on. The current policy framework on NGOs (CSOs) is relatively shallow and provides inadequate support to the functioning of the Civil Society sector in Tanzania. The most known policy document on this sector is the NGOs' Policy of 2001. It has been in existence for nearly two decades a fact which justifies its reform owing to the changes in socio-economic and political context within which the CSOs are operating. Moreover, the policy covered (by definition) only NGOs while the family of civil society sector (CSS)' related members are more than that as it is stated in chapter one of this compendium. The policy reform should be geared to establish harmony of CSS' members and not the opposite. This will make all CSS/ CSOs members owing and abiding with it.

The essence of this chapter is to further orient CSOs on practical issues of concern with regards to the existing legal framework on the same for two purposes, namely:

- (i) Protecting them (CSOs) from being victims of some of repressive legal practices caused by some weaknesses in the laws governing CSOs or administration of the same by the law enforcement agents; and,
- (j) Sensitizing CSOs to take appropriate and effective advocacy strategies for the reform of the framework through an amendment or repeal or enactment of the (new) laws.

Reading this chapter in conjunction with similar one for compendium one will empower CSOs to be on top of the needed reforms for the betterment of CSS in Tanzania.

## **2.2 CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA OF 1977**

### **2.2.1 Implications of Constitutional Rights to CSOs' Operations**

As it is further explained in the coming parts of this compendium, some of the main intervention strategies by CSOs are engagement with media; information dissemination; association; and, assembly. These are some of the core advocacy mechanisms.

The *Constitution of the United Republic of Tanzania of 1977* (URT Constitution) contains a Bill of Rights and Duties (under Articles 12 to 29), which guarantee protection of a range of rights and responsibilities to everyone, including CSOs' actors and CSOs as legal entities. Some of the rights which are mostly relevant to the existence and operation of CSOs are freedom of association and assembly; and, right to information.

The basis of CSOs' enjoyment of such and other rights is, among other provisions, Article 8(1) (a) and (c) of the Constitution. The said provision provides that, sovereignty of the State resides on the people and that, the government is accountable to the same (people). Article 9 obliges the State to observe human rights' based principles as stipulated under the *Universal Declaration of Human Rights of 1948 (UDHR)*. These and other obligations have been translated into details under the said Bill of Rights and Duties (Articles 12-29) of the URT Constitution.

Article 18 of the said Constitution provides for the freedom of opinion and expression. Those include the right to seek, receive and disseminate information regardless of the national boundaries. Furthermore, interference of communication is prohibited (unconstitutional). Article 20 of the Constitution provides for the freedom of Association. Sub-article 1 of this provision states that:-



*“Every person has a freedom, to freely and peaceably assemble, associate and cooperate with other persons, and for that purpose, express views publicly and to form and join with associations or organizations formed for purposes of preserving or furthering his beliefs or interests or any other interests.”*

This provision (Article 20 (1)) seems to elaborate further Article 8 (1) (d) which obliges the State to ensure effective participation of the people in the affairs of their government. Obviously, associating and assembling are just some of the ways for which people could participate in the affairs of the country. Other modalities stated in the constitution include through representatives and formation of the local government authorities (LGAs) under Article 145 of the Constitution.

### **2.2.2 Gaps of Guaranteed Constitutional Rights**

The current Constitution of Tanzania has undergone several reviews as it is explained in compendium one of THRDC. Despite those fourteen (14) changes, there are still some gaps which limit the enjoyment of these constitutional rights by individual persons or institutions including CSOs. Such gaps include:-

- (i) Lack of effective enforcement mechanisms.
- (ii) Bill of rights shallowly enshrines human rights e.g not addressing rights of special groups such as HRDs and CSOs in a specific way.
- (iii) CSOs are not specifically recognized and protected by the Constitution

As for the lack of enforcement of the rights under Articles 12-29, the CSOs providing legal aid to their clients have, in several occasions, attempted to challenge the constitutionality of some laws and practices as being in violation with the said provisions. The procedural law for this process is the *Basic Rights and Duties Enforcement Act, Cap. 3 (of 1995)*. Section 4 of the said law stipulates that:-

*“If any person alleges that any of the provisions of sections 12 to 29 of the Constitution has been, is being or is likely to be contravened in relation to him, he may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the High Court for redress.”*

The application to the High Court is by way of petition. Section 10 (1) of this law provides for mandatory quorum of three (3) Judges of the High Court in determination of every constitutional petition lodged. A single Judge can determine only whether the application is frivolous, vexatious or unfit for hearing. Experience has shown that, seeking constitutional redress through this law has been a challenge on part of the petitioners, most of whom being CSOs especially due to unavailability of sufficient Judges to constitute a required judicial quorum. For instance, LHRC,

PINGO's Forum and Ujamaa CRT lodged a constitutional case to challenge and stop evictions of the Maasai communities of Loliondo, Ngorongoro district Arusha in December 2009 before the High Court of Tanzania at Arusha. The case remained pending in court without being heard for more than nine years now despite the fact that it was filed under certificate of urgency – to hasten the process. The trend is also the same for so many other constitutional cases lodged by different petitioners.

Another challenge on the enforcement of the constitutional rights is on the question of locus stand (entitlement to demand rights in court). A case of LHRC and TLS against Hon. Mizengo Pinda and Attorney General of 2013 is used as an illustration here. In this case,<sup>3</sup> the petitioners (LHRC and TLS) brought a case against part of the statement by Mr. Pinda, the then Prime Minister, who was heard and quoted saying that, '*... if you cause disturbance, having been told not to do this, if you decide to be obstinate, you only have to be beaten up... and I am saying you should keep on beating them because we don't have any other means ...*' The premier made these remarks on 20th June 2013 while he was responding to a question in Parliament.

Citing Articles 12, 13 and 14 of the URT Constitution,<sup>4</sup> the Petitioners wanted to persuade the court that, such remarks support and encourage abuse of power by the Police, degrading and inhuman acts as well as torture, which would also create an environment for future abuse of human rights in general. There were also other prayers for the court to decide on with regards to the constitutionality of the *Parliamentary Immunities, Powers and Privileges Act, Cap. 296*. Some of the critical issues to guide disposition of this case were (i) whether the petitioners have locus standi to the petition for this case; and, (ii) whether the (high) court has powers to decide on the parliamentary proceedings made in the house – as such proceedings are subject to the immunity of the said law.

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<sup>3</sup> LHRC & TLS Vs. Hon. Mizengo Pinda & Attorney General, Miscellaneous Civil Cause No. 24 of 2013. It was adjudicated by Judges Jundu, Mwarija and Twaib at Dar es Salaam's High Court Main Registry.

<sup>4</sup> The provisions guarantee the right to life, rule of law and the right to fair trial.

### Note: Arguments on the Court's Jurisdiction over Parliamentary Proceedings

The respondents through Attorney General (AG) based their arguments in reference to the decision of the court in the case of Augustine Lyatonga Mrema v. The Speaker of the National Assembly & Attorney General [1999] TLR 206. In this case, the court decided that, it did not have jurisdiction to hear the case against the parliamentary proceedings because that would be in violation of Article 100 (1) of URT Constitution which protects the parliament. The respondents also cited the case of Attorney General v. Rev. Christopher Mtikila, Civil Appeal No. 45 of 2009 (unreported), in which it was ruled out, among other things that, where there are express provisions ousting jurisdiction of the court, the same observes them and refrains from adjudicating. The Petitioners maintained, among other things that, the said immunity is not absolute, citing the Indian court's decision in the cases of Raja Ram Pal v Hon. Speaker, Lok Sabha and Others, Writ Petition (Civil) 1 of 2006; and, Vijayakant v Tamil Nadu Legislative Assembly, Writ Petition No. 4149 of 2012 as well as Tanzanian Court of Appeal's decision in the case of Attorney General and 2 others v Aman Walid Kabourou [1996] TLR 156. In the Tanzanian case, the court ruled out that, the High Court of Tanzania has a supervisory jurisdiction to inquire into the legality of anything done or made by a public authority.

After a length of arguments of these two issues, the court decided (among other things) that, the immunities granted to parliamentarians by Article 100 (2) of the URT Constitution are not absolute. They are subject to other provisions of the Constitution and other laws. With regards to the *locus standi*, the court ruled out that, (i) the petitioners, being juristic persons (legal and not biological persons) are not the ones whose rights are likely to be infringed (such as torture, inhuman and degrading treatment or a breach of human dignity and security of the person) as they claimed in their petition; and, (ii) the petitioners did not show in their pleadings, that they are the direct victims or potential victims of the impugned statement by the Prime Minister as it is required to indicate so under Article 26 (2) of the URT Constitution.

The decision of the court had two implications, namely; restricting itself to expand the constitutional jurisprudence of those who can claim against violation of human rights; and, perpetuating the unnecessary technologies of the law even for human rights related matters. The CSOs have, for a long time, remained to be the voice of the voiceless especially due to the low level of civic awareness and other factors limiting access to justice in Tanzania. A clear understanding of the role of CSOs and judicial mandate under Article 107A of URT Constitution would have made a different judgment.

Thirdly, The Constitution of Tanzania does not recognize or mention HRDs or CSOs as key actors in the field of human rights promotion and development. It should be well understood that, individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all development, human rights and fundamental freedoms through activities such as education, training, outreach and research.

Other countries in the world and Africa have provisions in their laws or constitutions that recognize CSOs, HRDs as key actors in the field of human rights. For instance, Mexico has gone as far as institutionalizing activities of HRDs in the Constitution (Political Constitution of the United Mexican States) Section One of the June 10, 2011 amendments reads as follows; *“All authorities, in their areas of competence, are obliged to promote, respect, protect and guarantee the human rights, in accordance with the principles of universality, interdependence, indivisibility and progressiveness. As a consequence, the State must prevent, investigate, penalize and redress violations to the human rights, according to the law”*

The Constitution of Tanzania mentions only: The Commission for Human Rights and Good Governance; Prisons and the Police Force and the Judiciary as the main state organs responsible for protection of human rights without recognizing CSOs and HRDs.

Fourth, the Constitution of Tanzania narrowly incorporates and describes human rights and it also generalizes all groups notwithstanding the reality that, each of such groups normally has specific needs and therefore, peculiarity of seeking legal redress once their rights are violated or abused.

Other East African countries especially Uganda and Kenya have quite detailed Bill of Rights in their respective Constitutions. On this, the Kenyan 2010 Constitution could be cited as an example on how elaborative it is in its Bill of Rights as well as enforcement mechanisms of the same. For instance, Article 19(3) of the Kenyan Constitution states that:-

*“ The rights and fundamental freedoms in the Bill of Rights (a) belong to each individual and are not granted by the State; (b) do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognized or conferred by law, except to the extent that they are inconsistent with this Chapter; and (c) are subject only to the limitations contemplated in this Constitution.”*



This is completely different from Article 30 of the Tanzanian Constitution – both with the same essence.

Furthermore, Article 23(4) of the *Kenyan Constitution of 2010* requires the State to ‘enact and implement legislation to fulfill its international obligations in respect of human rights and fundamental freedoms.’ This one can be interpreted to give international human rights instruments (treaties) a strong position in Kenyan legal framework unlike the Tanzanian case whereby, under Article 63 of URT Constitution, such treaties has to be ratified by the Parliament and then interested parties conduct some advocacy interventions for the ratified treaties to be domesticated in the country.

Furthermore, Article 24 of the Kenyan Constitution provides for the enforcement of the Bill of Rights, which generally prohibits imposition of undue technicalities in deciding constitutional cases. It has not put a requirement of two or three Judges to adjudicate human rights petitions lodged as it is the case in Tanzania.

Moreover, the Kenyan Constitution elaborates the human rights quite extensively. For instance, while the Tanzanian Constitution has compacted rights or freedoms of information and expression in one provision, the Kenyan one has distinctively and extensively elaborated each of these and others e.g freedom of press. Article 33(1)(c) and 34 of the Kenyan Constitution also includes the ‘academic freedom and freedom of scientific research’ and freedom of media, which in Tanzania’s case, that freedom seems to be curtailed by recently enacted laws on statistics, cybercrimes and information as elaborated further on.

As regards to the reflection of specific rights of some groups, Articles 53 - 57 of the *Kenyan Constitution of 2010* mentions children; People with Disabilities (PWDs); youth; minorities and marginalized groups; and, older members of the society as groups whose’ rights need greater certainty to the application (apparently due to their level of vulnerability). The URT Constitution is silent on this; however, the proposed new *Constitution Draft of URT of 2014* (Judge Joseph Warioba’s version), had all these rights including those of women reflected. The HRDs as special group have also not been given specific recognition under the URT Constitution. This (HRDs) group is recognized to its work of protecting, promoting and enhancing human rights in all spheres of life – as individuals or with others. The nature of their work normally exposes them into eminent dangers and a number of them have been intimidated, have gone missing, injured and killed. The specialty of their work renders it imperative to protect them constitutionally.

### 2.2.3 Challenges of Enforcing Constitutional Rights – CSOs Perspective

The enforcement of the same is also marred with some legal complications, which have hindered CSOs from demanding their rights and the rights of their target groups. The main challenge being the presence of claw-back clauses. The phrase claw-back clause in this context refers to provisions of the Constitution of Tanzania that are interpreted to minimize or limit or mitigate some of the rights guaranteed under the Constitution. There was an attempt to exclude such clauses in the 2010s during the constitutional reforms. However, Article 30 of the Constitution is intact as still explicitly limits the scope of the application of the rights. Article 30 (2) of the Constitution provides, among other things that:

“It is hereby declared that the provisions contained in this Part of this Constitution which set out the principles of rights, freedom and duties, does not render unlawful any existing law or prohibit the enactment of any law or the doing of any lawful act in accordance with such law”.

The reasons for the said limitations are stated in a vague manner under the same provision (Article 30 (2)) of the URT Constitution to include:-

- a) Not to violate the rights and freedom of others in the course of exercise the right.
- b) Safeguarding the defence, public safety, peace and morality.
- c) In the course of executing a judgment or order of the court.

Indeed, the existence of this claw-back clause has, to a large extent influenced the enactment of laws some with provisions which violates some of the constitutional rights. The laws on cybercrime, statistics and the media which are discussed in coming sections of this compendium, have been enacted and are being implemented on the pretext of protecting the people and the government. A critical analysis of the laws clearly suggests a desire to limit the civic space of CSOs and human rights defenders (HRDs) in Tanzania.

### 2.2.4 Recommended Reforms of the URT Constitution

The 1977's URT Constitution has undergone several amendments after the inclusion of the Bills of Rights and Duties in 1984 through the 5th constitutional amendment. The patches have not been substantive enough to address current socio-economic and political situation.

Moreover, there are still some obvious gaps and challenges in the constitution with regards to its implementation as indicated above. Further constitutional reviews of some provisions would help to address some of the issues albeit not fulfilling all the needs. As such, it is recommended that a new constitution of URT should be adopted. Justice Joseph Warioba's draft constitution of 2014 is the mostly preferred draft as it embodies people's opinions, and therefore, it should be submitted to a referendum for finalization. There is a need to address all gaps and challenges highlighted above. The Constitution should also recognize CSOs and HRDs as key actors in development and human rights promotion.

## 2.3 NGOS ACT OF 2002

### 2.3.1 About the Law and the Policy

The *NGOs Act* came barely a year after the adoption of the *National NGOs Policy of 2001*. The said policy proposed for a legal framework that governs registration and regulation (mechanisms) of NGOs in Tanzania. The essence was, among other things, to streamline NGOs registration, which appeared to have some deficiencies. This sub-chapter provides an analysis of the gaps and challenges under the NGOs Act of 2002, NGOs Policy of 2001 and NGOs regulations of 2018.

The NGOs Policy and its subsequent Act was aimed at not only to solve the immediate problems of NGOs but also to assist in the promotion and development of the NGOs in Tanzania. The enactment of the NGOs Policy in 2001 and the NGOs Act, 2002 established the legislative framework for NGO operations. However, according to the THRDC NGO policy review report of 2018 many of its provisions remain unclear and in need of revision.

In addition, various reports indicate that the implementation of the 2001 NGOs policy has failed to meet the desired outcomes. The current policy has no clear objectives, which also lacks sound implementation strategies, and hence being an over-reliance on the NGOs Act which is also not comprehensive to meet its policy objectives.

The major conclusion from the opinions expressed by the stakeholders during the review of 2001 policy in 2018, on the implementation of the policy was that all the eight policy objectives have some challenges that hinder their effective implementation. Most of the stakeholders are not satisfied with the intentions of the policy objectives as well as the way they are being implemented.

In the same vein, the NGOs sector has so many challenges that both the current policy and the law have failed to address. Some of these challenges include;

- (i) Challenges in the current regulatory and legal framework for the registration and operations of NGOs;
- (ii) Lack of precise definition of what constitutes NGOs ;
- (iii) Lack of clear and well-designed programs for the development of NGOs sector in Tanzania
- (iv) No well-developed mechanism that facilitates the documentation of NGOs contribution to national development
- (v) A large part of NGOs sector is donor dependence hence make the issue of sustainability a challenge.
- (vi) No developed strategies for NGOs and government partnerships
- (vii) Poor Coordination
- (viii) Old and centralized registration and reporting procedures
- (ix) Policy Implementations strategies not in place

### 2.3.2 Gaps of the NGOs Law and the Policy

Generally, the findings by THRDC suggest that there are some issues of importance that are outdated or are missing in the current NGOs policy and the Act that need to be amended. This is because the current policy and the NGOs Act seem to be unfriendly and irrelevant to the NGOs sector of the modern times. The context since 2001 to date has changed tremendously hence the demands for a review of the policy and the law to reflect the current trends and needs of the NGOs in Tanzania. One of the issues that need to be recognized by the new policy and law, for example, is to digitalize operations between the government and NGOs, decentralize coordination and reporting procedures.

Thus, the review of the policy and the law will enable the government to revisit and review issues that are outdated and to also include new ones to enhance smooth implementation of the policy and operations of NGOs in Tanzania. The review will also provide new ideas to strengthen the performance of NGOs and coordination of NGOs. There are several gaps in relation to the contents, interpretation and applicability of some of the provisions of this law and the Policy.

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<sup>5</sup> Please refer a comprehensive Policy Review Report of the 2001 NGOs Policy coordinated by THRDC as part of this policy development process.



The practical challenges on the same are highlighted in subsequent sub-parts of this compendium. This sub-chapter provides an opportunity to learn about the various gaps of the NGOs Law and Policy given the fact that both the policy and the law were enacted more than 15 years ago.

### **(i) The Definition of NGOs**

Various studies have shown that there is a mismatch between the definitions provided by both the policy and Act. For example, the NGO Policy (2001) defines NGOs as follows:

*“A Non Governmental Organization also known as “NGO” means is a voluntary grouping of individuals or organizations which is autonomous and not-for-profit sharing; organized locally at the grassroots level, nationally or internationally for the purpose of enhancing the legitimate economic, social and/or cultural development or lobbying or advocacy on issues of public interest or interest of a group of individuals or organizations.” (NGO Policy, 5.1 (viii))*

The NGO Act includes a slightly different definition: The 2005 amendment of the NGOs Act under section 5 defines a Non-Governmental Organization also known by acronym NGO as a *voluntary grouping of individuals or organization which is autonomous, non-partisan, non-profit sharing;*

*(a) Organized locally at the grassroot, national or international levels for the purpose of enhancing or promoting economic, environmental, social or cultural development or protecting environment, lobbying or advocating on issue;*

*(b) Established under the auspices of any religious or faith propagating organization, trade union, sports club, political party, or community based organization; but does not include a trade, union, a social club or a sports club, a religious organization or a community based organization.” (NGO Act (2))*

While the definition offered by the NGOs Act (2002) seems to be more comprehensive, the definitions should also include issues related to service delivery, good governance and democracy.

Moreover, while the types and levels of NGOs have just been mentioned in the definition NGOs by the policy to include *grassroots level, national and international NGOs*, other policy documents such as the National NGO Policy of Uganda (2010) defines these levels more clearly. For example, the National NGO Policy of Uganda defines NGOs as follows:

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<sup>6</sup> THRDC (2018), The Review of the 2001 NGOs Policy.

**Non-Governmental Organization:** *Any legally constituted private, voluntary grouping of individuals or associations involved in community work which augment government work but clearly not for profit or commercial purposes.*

**National Non-Governmental Organization:** *An NGO that is wholly controlled by Ugandans, registered exclusively within Uganda and with authority to operate within or across two or more districts in Uganda.*

**Regional Non-Governmental Organization (RENGO):** *An NGO having its original incorporation with one of the states of the East African Community (EAC) and partially or wholly controlled by citizens of one or more partner states in East Africa but operating in Uganda under a certificate of registration.*

These three levels of definitions of NGO provide a more precise understanding of the meaning of NGOs across different stakeholders.

Section 2 of the law defines NGOs to mean ‘a voluntary grouping of individuals or organization which is autonomous, non-partisan, non-profit sharing.’ There has been a challenge on the interpretation of ‘volunteerism’. In the real sense, the ‘voluntariness’ of the group cannot be subject to legal impediments such as fees, annual reports, registration requirements and even punitive measures as it is witnessed at the moment. Instead, the law enforcers would have appreciated the fact that voluntary people are organized themselves in order to supplement the work of the State.

## **(ii) Registration, Reporting and Annual Returns**

The Registration process under the current law is still very bureaucratic and demanding. Section 11 of the NGOs Act provides for the registration procedure. The current NGOs registration and reporting processes are not decentralized, and not digitalized hence not cost effective as many people must travel all the way from different parts of the country for registration process and filling annual returns at the headquarters of the NGOs Unit in Dodoma. The registration process is also still analogue as applicants are still required to submit hard copies of printed documents to complete the process. Surprisingly even NGOs that are supposed to be coordinated at district level are forced to travel to the NGOs Head Quarters for registration and other coordination matters.

The major gap under this law is the lack of modernity in the registration process. To put in place registration and coordination procedures of NGOs which are transparent, accessible, cost-effective, digitalised and decentralized to safeguard the freedom of association.

THRDC recommends the government in consultation with the civil society leadership to streamline and improve the registration process and adherence to other registration formalities. THRDC thus recommends the NGO registration process and filling of annual returns to be digitalized and centralized at the District level as follows:

- a. The Government requires each District to designate a competent NGO coordinator.
- b. The Government shall put a digitalized mechanism for NGOs registration and coordination process including submission of annual reports online.

### **(iii) Responsiveness to NGOs issues**

Stakeholders feel that key issues like taxation, charitable status, government partnership are not addressed in the current policy and the law. Other critical issues not well addressed by the law and the policy include security issues for NGOs' existence and their activities. The following are some of the key issues recommended by NGOs to be included in the policy and the law:

- a. More freedom of NGOs
- b. Need to see improvements in the government and NGOs partners complementing each other rather than seeing NGOs as a threat
- c. Established a single regulatory system for NGOs
- d. The NGO policy should also capture the aspect of capacity building for government officials, such as the NGO Coordinator at the council level. Sometimes they are not well informed about changes that are happening.
- e. Definition of donors those who are acceptable and those that are not acceptable. This will help clarify and avoid conflict of interest from the government and other donors
- f. Decentralization of NGO register powers to the District and Regional levels
- g. The use of electronic application process, reporting and annual payments to reflect the current trends. This will reduce time spent to visit register office for things that can be done online.

- h. The policy should be able to protect NGOs whenever other government agencies intimidate certain NGOs because of their practice or actions.
- i. The policy should state the roles of the District, Regional and National NGO register government offices. Since currently almost everything is done at the national level, while local offices wait to receive orders only.
- j. Monitoring and evaluation should be clear
- k. The position of the NGOs in contributing to the country in general
- l. To recognize NGOs as key partners in economic development
- m. To reduce the registration and annual fees

#### **(v) Institutional Framework and Coordination Gaps**

The Current set up of NGOs institutional Framework is composed of mainly three main channels of coordination which include; The NGOs Board, The Director of NGOs and the National Council of NGOs (NACONGO). Some of the main roles of NGOs Board such as registration of NGOs have been delegated to Director of NGOs. The Office of the NGOs Unit is under the Ministry of Health, Community Development, Gender, Elderly and Children (MoHCDCGEC). The Director of NGOs is assisted by Regional and District Development Officers to implement some of his roles at local government levels. The main challenge on the ground is the centralization of many key activities to the NGOs Unit hence creating some bureaucratic procedures to NGOs.

Below are some of the main weaknesses of the institutional framework for the current NGO policy:

- a) There is a missing link in that the Registrar of NGOs does not have a forum with the NGO community.
- b) The below policy statement has not been put in implementation: *“At national, regional and district levels appropriate frameworks and mechanisms be established to facilitate communication and consultations between the Government and NGOs”*.
- c) The composition of NGO Coordination Board is not optimal. *The institutional framework of the current policy is not bad but needs to be modified. It establishes the Board (which is non-existing) and the National Council of NGOs (NaCoNGO).*
- d) The policy statement below has not been put in implementation, so need to be in practice now. *“At national, regional and district levels appropriate frameworks and mechanisms are established to facilitate communication and consultations between the Government and NGOs”*.

- e) The current NGO policy does not allow for a smooth institutional framework and coordination of District, Regional and National offices. For example, an NGO is nationally registered under the NGOs register and is updated yet when a similar NGO goes to its respective location they need to register it to its local rosters. This shows lack of coordination.
- f) The District and Regional offices who in most cases are the custodian of many NGOs do not have the power to allow NGOs from within their area or those that come from outside to operate in their area. Currently, all NGOs wanting to operate in a particular area need to be granted permission from Prime Ministers' Office Local Government and Regional Administration. This is a challenge in itself
- g) There is a missing link of NGOs coordination from national, regional and district level.

### **(vi) Gaps in the Self-Regulatory Framework**

It is a good gesture that the *NGOs Act* establishes a self-regulation mechanism on for NGO's on certain matters pertaining to their operations. Section 25(1) of this law establishes the National Council of NGOs (NACONGO). Sub-section 2 of this provision highlights the general responsibility of NACONGO, which is to be *'a collective forum of NGOs for the purposes of co-ordination and networking of all NGOs operating in Mainland Tanzania.'* The council has performed its responsibilities in a very low profile such that some of the expectations from the NGOs could not be met.



The main issue of concern for NACONGO is the lack of institutional capacity in terms of human and financial resources. Unlike other laws which provides for sources of funds for their implementing organs, the *NGOs Act* does not have such a provision. It does not even suggest for the alternative sources of funds for NACONGO to operate.

Secondly, NACONGO fails to operate effectively because of lack of complimentarily with the NGOs' Board which is created under Section 6(1) of the NGOs Act. The NGO Board has remained defunct since the inception of the law in 2002. The reasons for this delay are outside the context of this compendium. Apparently, the absence of a strong NGOs' self-regulatory mechanism has given leeway and liberty to the government to exercise direct control of CSOs without sufficient consultation of CSOs actors and even NACONGO itself. The law should have mandated NGOs themselves to appoint the NGO's Board of their choice so that they can be comfortably and independently governed by the same, unlike the current legal stance where the government appoints the Board.

### **2.3.3 Challenges of the NGOs Law and the Policy**

There are also challenges in relation to applicability of some of the provisions of the NGOs Act and Implementation of the NGOs Policy.. This sub-chapter highlights some key challenges of the during the implementation of the NGOS Policy and the application of the NGOs Law especially those relating to registration, coordination and operations of NGOs

#### **(i) Challenges of Compliance to the NGO Act, 2002**

After the enactment of the *NGOs Act in 2002*, CSOs registered under various laws were and are still obliged to comply with the provisions of this law. Section 11(3) of the *NGOs Act of 2002* stipulates that, '*an NGO which is registered or established under any other written law shall apply to the Registrar for a certificate of compliance.*' Sub-Section 4 of the same provisions states that, terms and conditions under this law shall then be applicable to the organization granted a certificate of compliance. Part of this provision reads that '*terms and conditions for registration under this Act and shall have similar effect as a certificate of registration issued under this Act*'

This law does not relinquish NGOs/ CSOs from the duty to comply with the terms and conditions of other laws. This means that, CSOs registered under other laws apart from the NGOs Act, are subjected to double registration. For instance, under the *Companies Act, Cap. 212*, CSOs (registered as companies limited by guarantees without share capital) are required to file annual returns to the Registrar of Companies (BRELA). There are fees attached to those returns as indicated in the first compendium. This is a challenge not only to the budding but, also to the well-established CSOs because usually donors' grants do not finance such costs. As such, in most cases, such costs are borne by the directors of the CSOs.

Apart from financial implications, it is also time consuming to comply with the NGOs law because the process is highly centralized at the ministerial level only, while most of the CSOs operate upcountry (outside Dodoma region where the Registrar of NGOs is to be found). This matter is further discussed in subsequent sub-parts of this chapter.

## (ii) Criminality Aspects

Another legal dilemma facing NGOs is Section 36 (1) of the law, which unjustifiably unveils the corporate status of NGO's by shifting liabilities to individual officials of NGOs. The said provision states that:-

**“ For the purposes of Section 35, where an offence has been committed under this Act by a Non-Governmental Organization, **any of the office bearers of such Non-Governmental Organization shall be liable to be proceeded against and be punished accordingly, unless any of such office bearer proves to the satisfaction of the Court that he had no knowledge, and could not, by the exercise of reasonable diligence, have had knowledge, of the commission of the offence (emphasis added).**”**

The criminal penalties against individuals connected to NGOs serve as a threat and deterrent against their operations in Tanzania. The universal legal jurisprudence on corporate governance tends to separate individual directors from the entities (institutions) as legal persons. Therefore, section 36(1) of the said law appears to be in violation of this universal legal tendency.

The criminal penalties against individuals connected to NGOs serve as a threat and deterrent against their operation in Tanzania. For example, Mr. Aidan Eyakuze Executive Director of TWAVEZA his passport was seized by the Immigration Department for unknown reasons. The incident which led to the confiscation of his passport and interrogation about his nationality was with regard to the research findings of *Sauti za Wananchi* which showed that the popularity of the President on has dropped. Samweli Nangiria of Ngorongoro NGOs Network was also a victim of this criminalization of individuals in NGOs where in 2016 he was charged with espionage contrary to the National Security Act, 1967.

### **(iii) NGOs and the Right to Freedom of Association**

The current NGO Policy provides for the protection of the independence of NGOs and the right to freedom of association. For example, Section two states that:

*“ this policy reiterates and retains all the fundamental principles of NGOs, that is, they are formed, run, developed or terminated only through free and voluntary acts of individuals and associations; are managed and controlled by members, trustees or directors independent of the Government”.*

While it may be tempting to conclude that the protection of the independence of NGOs, meaning that an NGO can only be closed through free and voluntary acts of the NGO itself, independent of the government, the provision in the NGOs Act of 2002 and its regulation is contrary to this intention. For example, the NGO Act includes provisions that give the government authority to close NGOs in the articles 7(1) (e), 20 and 21. Article 20. These articles give the NGO Coordination Board the authority to suspend or cancel a certificate of registration. The same body has the power to approve or reject applications for registration.

### **(iv) Adequate NGO Sector Recognition and Operations**

The Government basically recognizes the significant role and contribution of NGOs and considers them as important partners in the development process. But NGOs need a more supportive environment to operate efficiently and effectively. The world on NGOs is changing and the government has already developed some strategies and plans, for example, the National Plan of Action to End Violence Against Women and children (2016-2021), and the implementation of Sustainable Development Goals.



To be successful, the government needs to work with NGO in a friendly environment where they can operate and bring tangible results. In an environment where the government does not work collaboratively with NGOs, it is likely that service delivery will be affected. It is now almost 17 years since the policy and the law is in place, but there is not enough partnership between NGOs and the Government.

It is, therefore, in the interest of the Government to create a conducive and enabling environment to ensure that NGOs potentials are fully utilized. Of recent, there has been rapid diminishing of civic space as compared to previous years. It is the view of the stakeholders that the partnership between government and NGOs is not robust to enable the smooth implementation of NGOs activities.

The policy has been supporting NGOs with necessary institutional requirements like registration, recognition and reference however it falls short in delivering since it cannot harmonize policy affecting NGOs from other Government regulatory authorities.

Some important policy statements are not adhered to by the Government. It does not protect or lay down principles that guide the operating law to be friendly and single. Hence there is the presence of multiple laws controlling/regulating NGOs in the country.

#### **(v) Centralization of Reporting Process**

The Government requires NGOs to provide details of their planned activities to the Registrar. The Government requires registered NGOs to submit annual reports and accounts. The Government requires maintenance of a public record of registered NGOs, including details of reports and accounts submitted and fees paid, which NGOs and members of the public can access free of charge, ideally online. However, the reporting mechanism seems to be bureaucratic and expensive for some NGOs. The requirement of submitting reports in hard copies at the NGOs Directory office in Dodoma is unnecessarily expensive as NGOs must travel from different parts of the country to file their reports. This is quite unnecessary under the current digital world.

The current NGO policy states there will be decentralization of its activities, however; looking at the actual procedures it's different. For example, annual payments are done via banks but receipts need to be collected from Dodoma. This could have been done the respective District or Regional Offices, as one of the aspects of decentralization as stipulated in the NGOs policy. The same to annual reports, they are all submitted to the registrar while it could be done to the regional offices that could easily justify the work done by the NGOs in their own regions. In the existing policy self-assessment/monitoring and evaluation of NGOs by themselves is not stipulated.

NGOs in Tanzania therefore call the Government to create a less expensive, digitalized and decentralized NGOs reporting mechanism and information sharing.

This can be done by establishing an online portal for sharing information related to NGO and Government activities.

#### **(vi) Regulatory Challenges**

Apart from the challenges facing NACONGO which ought to have been NGOs' self-regulation and coordination mechanism, there are other regulation and coordination challenges facing NGOs especially under the NGOs law. Most of those challenges are entrenched in the regulations formulated under this law and the administrative directives from the Registrar and the Ministry responsible for NGOs.

There are also some amendments to the NGO law made in recent years. Some of the regulations in question are:-

- i) The Non-Governmental Organizations Regulations of 2004 (G.N No. 152/ 2004), which is made under Section 38 of the NGOs Act of 2002.
- ii) The Non-Governmental Organizations Act (Amendments) Regulations of 2018 (G.N No. 609/ 2018).
- iii) *The Written Laws (Miscellaneous Amendments) Act No. 11 of 2005.*
- iv) *Taarifa kwa Umma – Mashirika Yasiyo ya Kiserikali Yanapewa Siku 14 Kuwasilisha Taarifa za Miradi na Matumizi ya Fedha za Mwaka 2016 na 2017 of 30th October, 2018.*

*The two 2018 rules or directives are of particular concern.* On 12th of October, 2018, Minister for Health, Community Development, Gender, Elderly and Children signed the Non-Governmental Organizations (Amendments) Regulations, 2018 which were later published in the Government Gazette (G.N) on 19th October, 2018. The G.N is made under Section 38 of the NGOs Act of 2002. It amends the provisions of the 2004's regulations (G.N No. 152). The newly introduced regulation essentially introduced a new part to the 2004 Regulation now to be known as Part IV with the title of 'Financial Transparency and Accountability.' The 30th October 2018 press statement by the same Ministry was a reminder to CSOs of the compliance to this new regulation.<sup>7</sup>

The members of the THRDC and NGOs in general support the move by the Ministry for they seek to ensure transparency and accountability for the NGOs in Tanzania. THRDC has even been and continues to organize members and stakeholders meeting for the purposes of raising awareness to them on the content of the Regulations. We have also prepared a Compendium of domestic laws and policies governing NGOs in Tanzania as part of ensuring NGOs/THRDC members complies with them. However, the Coalition is concerned with several issues which we would like to bring to the attention of the Ministry for consideration. THRDC concerns are all based on having good Regulations for the interests of all stakeholders and development of NGOs sector.<sup>8</sup>

## 1.1 Stakeholder's Involvement

The wider civil society sector and NGOs play an important role in stimulating social, economic and cultural development in our society. Their active participation at local, national trans-boundary and regional level in all aspects of development, awareness raising, policy formulation, planning, management, implementation, monitoring and evaluation of different projects makes their involvement in any decision that affects their interests even more crucial. In order to ensure a meaningful, coordinated and effective participation of civil society in the above mentioned phases, there is a need to actively involve them in decision making processes.

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<sup>7</sup> THRDC (2018) **Analysis of the New Non-Governmental Organizations Act (Amendment) Regulations.**

<sup>8</sup> Ibid.

The promulgation of the new NGOs Regulations did not follow the procedure, as the law requires consultations of the Board. This is based on the facts that there is no Non-Governmental Organization Coordination Board which has not been formed since the expiration. Section 25 (1) of the NGO Act establishes the National Council for Non-Governmental Organizations (NACONGO) as a collective forum for purposes of coordinating and networking NGOs in the country. Therefore, failure to consult key stakeholders such as NACONGO in the making of these Regulations makes them lose their legitimacy. We therefore propose that the Regulations should cease to be used until all key stakeholders are involved in the process of making them.

## 1.2 Procedural Propriety

Section 38 (1) and (2) of the NGO Act empowers the Minister upon consulting the Non-Governmental Organizations Coordination Board to make regulations. Regulations can be made dealing with:

- (a) Various forms to be used in this Act;
- (b) Fees payable under this Act;
- (c) The format of the reports of activities to be submitted by the Non-Governmental Organization; and
- (d) Any matter which needs to be prescribed under this Act.

Section 38 (3) requires that the Regulations made by the Minister to be published in the Government Gazette. It is important to note that whenever a law requires that a subsidiary legislation, including regulations must be published in the Government Gazette, then the said regulations must be published in the Government Gazette and can only come into effect upon being so published and not otherwise. The Non-Governmental Organizations (Amendments) Regulations, 2018 seems to be in compliance with this requirement as they have been published on 19th of October 2018 as GN No. 609 of 2018.

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<sup>9</sup> Ibid.

### 1.3 Validity of the Regulations

It is elementary to note that an Act of parliament is operationalized by a subsidiary legislation. This means therefore that guidelines as to how particular sections of an Act are to be implemented can to be found in a particular piece of subsidiary legislation promulgated for that purpose. It is in that premise that courts have always been strict to limit the scope of the subsidiary legislation to the confines of a particular section in the parent Act from which the legislation is drawn. Where it appears that the subsidiary legislation has gone beyond what was envisaged in the parent Act, courts have not hesitated to declare such excesses illegal and un-procedural.<sup>10</sup>

The newly enacted Regulations are intended to operationalize Section 32 of the NGOs Act which provides to the effect that, “Non-governmental Organizations registered under this Act shall be entitled to engage in legally accepted fund raising activities.”

From the foregoing provision, and from the foundation we laid in the foregoing paragraph, it was expected that the provisions of GN No. 609 of 2018 would be confined to providing guidelines as to what comprises ‘legally accepted fundraising activities’ and the procedure on how to engage in said activities. To the contrary, the provisions of Regulations 12 and 13 of GN No. 609 of 2018 have gone beyond what was expected; they provide for matters that are beyond fundraising activities. This provisions are ultra vires the parent Act and as such illegal and therefore are supposed to be struck out of GN No. 609 of 2018.

### 1.4 The Constitutionality of the Regulations

Regulations 12 and 13 seek to force non-governmental organizations (NGOs) to do disclosure which we submit that interferes with NGOs’ right to privacy as provided for under Article 16 of the URT Constitution of 1977 as amended. For instance, Regulation 12 requires NGOs, inter alia, to disclose to the public sources of fund or resources obtained, expenditure of the funds or resources obtained, the purpose of the funds or resources obtained, activities to be carried from the funds or resources obtained.

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<sup>10</sup> Ibid.



Regulation 13 requires NGOs to publish bi-annually funds received and its expenditure in wide circulated newspapers and other media channels which are easily accessible by the targeted beneficiaries, cause the contracts or agreements entered with donors or person who granted the funds to be submitted to the treasury and the Registrar not later than ten days from the date of entering the said contract or agreement for approval, declare to the Registrar of NGOs any other resource received either in cash or in kind before its expenditure.

First of all, the disclosure of information to the public sought under Regulation 12 and disclosure by publication sought in Regulation 13 are unnecessary and uncalled for. Complying with Regulation 12 is hard because all information are supposed to be published within 14 days contrary to financial principles which requires publication of only audited financial information which principally indicates sources, purpose and expenditure of the grant.

### **1.5 Offences Imposed under the New Regulations and their Implications**

This part shall generally look at the regulation that introduced the offences and its linkage with the offences in the NGOs Act, provide a brief synopsis of the introduced offences and at the end make suggestions and recommendations of what should be left as offences and what should be removed in a set of offences.

#### **Offences under the Non-Governmental Organizations (Amendments) Regulations, 2018**

Regulation 15(2) of GN 306/2018 creates offence(s) which can be collectively be described as Non Compliance by the NGO with Provisions of Part IV of the NGO Regulations of 2004. The introduced section terms the offence as an NGO which contravenes the provision of this Part commits an offence. A serious reading of this section would imply that anything not done or omitted to be done by NGOs amongst those items listed in Part IV of the Regulation may constitute an offence and hence attract penal sanctions .

The following are lists of key offences that can be committed by NGOs under Part IV of the GN 306/2018:-

- (a) Offences under regulation 12 relating to non-compliance with requirements of disclosure within a specified time frame of 14 days of completion fund raising activities and includes offences such as failure to disclose:-
  - (i) Sources of funds obtained,
  - (ii) Expenditure of funds or resources obtained;
  - (iii) Purpose of funds or resources obtained and
  - (iv) Activities to be carried from of funds or resources obtained.
- (b) Offences under regulation 13(a) relating to failure to publish to NGO beneficiaries by means of wide read medium of communication details of funding obtained that are in excess of TZS 20 million;
- (c) Offences under regulation 13(b) relating to failure to seek within 10 days approval of contracts in excess of TZS 20 million from the Treasury and the Registrar
- (d) Offences under regulation 13(c) relating to failure to declare to the Registrar before expenditure all other resources in excess of TZS 20 million whether in cash or in kind;
- (e) Offences relating to lack of financial transparency and accountability under Regulation 14 including but not limited to failure to open bank accounts, being transparent, not being audited, not having financial regulations etc;
- (f) Offences relating to failure to be accountable to the people being served by NGOs through existing local government structures under regulations 15(1)(a);
- (g) Offences relating to undermining the sovereignty of the state and rights of the people under regulation 15(1)(b) and,
- (h) Offences relating to non-observance of national laws under regulations contained under regulations 15(1) (c).
- (i) Failure by NGOs that obtained fund exceeding twenty million to declare to the Registrar of Non-Governmental Organizations any other resource received either in cash or in kind before its expenditure.
- (j) Entering into contracts which undermine sovereignty of the state and rights of the people.
- (k) Failing to develop and adhere to clear, well defined and written financial regulations that are consistent with sound financial management - principles and practice
- (l) Failing to introduce procedures that seek to limit resources used towards fundraising and running costs to a reasonable level or standard.
- (m) Failing to ensure all substantive expenditures are authorized in a process that involves scrutiny by more than one officer and where the Chief Executive or any other officer does not have unlimited authority.
- (n) Failing to develop and adhere to clear policies regarding payments to staff, volunteers to avoid conflict of interest and incentives to distort organizational priorities.

The offences established are massive and severe. The regulations and even the laws do not indicate State support to the work of CSOs apart from penal directives. Most of these and other offences introduced are regarded by many CSOs as being excessive control of the sector especially because there are no public funds allocated to support CSOs in Tanzania.

There are also questions of privacy of contract between CSOs and funding partners (others prefer to be anonymous); ability of CSOs to meet all those requirements including costs associated to preparation and publication of the financial statements. One media house said that, the minimum amount of money they can charge for a half a page advertisement/special feature is TZS 3,000,000.

The requirements came into being without prior consultations with the NGOs or giving them sufficient time like 6 months to prepare themselves to accommodate the new legal requirements.

Generally, the Regulations have introduced burdensome financial disclosure and reporting requirements, which can undermine NGOs' independence and ability to fundraise for their activities. The Regulations also provide a wider room for excessive state interference into the organizations' internal operations and hence interfere with NGOs' right to operate freely. Violation of organizational privacy rights, vague obligations for financial transparency, which grant the Government broad discretion to find that an NGO has violated the Regulations, is yet another restriction under the new Regulations. Tanzania Human Rights Defenders Coalition organized its more than 150 members and endorsed this analysis and recommendations which we would wish the Minister to consider.<sup>11</sup> Meanwhile, we propose that the implementation of the Regulations to be stayed pending consultation with key stakeholders in order to come up with progressive Regulations that have less implications on NGOs.

#### **Practical Issue # IV: Excessive Regulations Intensify Shrinking Civic Space of CSOs**

Most of the CSOs actors are of the view that, these regulations are calculated to continue shrinking the space of the civil society sector in the country because they are imposed without clear grounds apart from the top leadership directives that CSOs should be monitored. The over-regulation do not even appreciate a huge contribution of civil society sector in Tanzania since the time of independence. It is evident that, now the CSOs are going through tight operating environments compared to any other time in their history.

<sup>11</sup> Ibid.

### 2.3.4 Recommendations – the NGOs Act

In light of the gaps and challenges highlighted above, it is recommended that the NGOs Policy and the Law should be amended to, among other things:-

- (i) Give proper definition of NGOs, which will incorporate the elements of all forms of CSOs in order to avoid any possible confusion between NGOs and CSOs especially because the drive now is to streamline registration and coordination of CSOs in Tanzania. In the same vein, the understanding of CSOs as ‘not-for-profit sharing’ should be reflected in the law.
- (ii) Maintain the inclusion of advocacy and lobbying as legitimate acts that fall within the definition of NGOs.
- (iii) Operationalize the organs created under this law especially the Board and NACONGO. It is important that these organs are financed through public funds and, CSOs’ actors have a say in the appointment of the members of this organs.
- (iv) CSOs as entity with legal personality have to be responsible for their deeds instead of unveiling the corporate status of NGO’s - by shifting liabilities to individual officials of NGOs.
- (v) On the other hand, the changes in the socio-economic and political context, as well as other CSOs’ operational challenges and a need to strengthen relationship between CSOs and public sector, the *National Policy on NGOs of 2001* has to be amended. The over 17 years of its (policy’s) existence are sufficient reasons to warrant a review. Therefore, the on-going policy review is important process for shaping this sector.
- (vi) Amendments of specific provisions discussed above.
- (vii) The NGO policy needs to command authority regarding what constitutes a genuine NGO.
- (viii) Due to diligence registration processes must support procedure and the annual NGO returns need to change from compliance only to practically verifiable process.
- (ix) The policy should insist on contextual ethics (national values) to be respected by all NGOs. This may control the operations of NGOs to stick to national values, and goals without limiting the increase of NGOs provided the NGOs Board will have the power to advise and empower monitor the operations of NGOs. The current NGO policy states that the NGOs will not be engaged in any political activities. This policy does not define precisely what ought to be a political activity and what not to be. This has seen many NGOs addressing human right issues to be considered doing political activities and have been denied permission to operate in some places. Such scenarios need for the reviewed policy to provide a precise operational definition of what needs to be political and what not needs to be



- (x) Provide an incentive to register as an NGO by making all registered NGOs automatically exempt from income tax, VAT and capital gains tax.
- (xi) Ensure that the independence of NGOs is fully respected by ensuring that decisions on registration, suspension and deregistration are taken by a body with majority representation of NGOs.
- (xii) Ensure that the voluntary nature of NGOs is fully respected by removing the requirement to register. As such, organizations that are suspended or deregistered would continue to exist and operate but would simply no longer be registered as NGOs and would no longer have tax-exempt status. This would strengthen the [financial] incentive for them to update their registration.
- (xiii) Increase the time required for an NGO to prove its existence from 30 days to 180 days.
- (xiv) Maintain a public record of registered NGOs, including details of reports and accounts submitted and fees paid, which NGOs and members of the public can access free of charge, ideally online.
- (xv) Maintain NACoNGO as an independent self-regulatory body, accountable to NGOs themselves.
- (xvi) Governments should recognize the work of NGOs and broadcast its contribution in the socio-economic sector and appraise
- (xvii) Structurally Regional and District networks should be included in the policy/Act as the organs which will coordinate NGO's at their levels.
- (xviii) Build the capacity of NGO Coordinator at the council level to be able to guide and provide technical support to NGOs so that they comply with policy and legal framework. The capacity should go hand in hand with dissemination of different guidelines that govern NGOs.
- (xix) Include the section that requires the government to receive reports online and not travelling with hard copies. The same should apply to NGOs to apply through the central government systems of reporting.
- (xx) Give more power and decentralize the roles of the National NGO register to District and Regional registers for easy access and operation



## 2.4 TRUSTEES INCORPORATION ACT, CAP. 318

This part provides for the gaps, challenges and recommendations under the Trustees incorporation Act of 1956. An analysis of this law follows its relevance in the CSOs sector, due to the fact that it provides for the registration, operation and coordination of trustees in the country.

### 2.4.1 About the Act

This is a colonial legislation, enacted sixty two (62) years ago (in 1956). The last amendment, according a copy of this law posted on RITA's website, was in 1999. The RITA (Registration, Insolvency and Trusteeship Agency) regulates the registration process and compliance matters of the trustees.

### 2.4.2 Gaps of the Trustees' Incorporation Act

There are several provisions of this Act which need to be reviewed in line with contemporary corporate governance principles and the situation in which CSOs are facing at the moment. The most challenging or gaps are discussed below.

#### (i) Registration and Role of the Administrator General

Section 2 of the law puts a mandatory requirement of all trustees. According to Section 2(1) of the Trustees Incorporation Act, Cap. 318, a trustee or trustees appointed by a body or association of persons bound together by custom, religion, kinship or nationality, or established for any religious, educational, literary, scientific, social or charitable purpose, and any person or persons holding any property on trust for the same purpose have to be registered under this law. Sections 3 to 22 contain some directives on how the trustees should operate. The requirements include auditing of accounts; supplying any information needed by the Administrator-General (Registrar); and, sharing of information to the members of the trust fund. The law does not mandate the Administrator-General to facilitate 'growth' of the trustees apart from 'controlling' them (policing role).

#### (ii) Revocation of the Registration

Sections 23 – 29 are on revocation of the registration, suspension and appeals against the decisions of the Administrator-General to revoke or suspend the registration (incorporation) of the trustees. Section 24 (2) of this law requires Administrator-General to accord the trustee an opportunity to express him/ herself as to why the revocation or suspension should not be effected. This is, indeed, a best legal practice. However, since the Administrator-General's powers on registration are highly centralized, it has not been easy for him/ her sending out notice to each and every trustee. In most cases, the Administrator-General relies on the newspapers notices which are also quite generalized as it is explained further below.

(iii) No Appeal shall be brought against the Decision of the Minister

Section 27 of the Trustees Incorporation Act grants an opportunity to appeal for any aggrieved trustee against the decision of the Administrator General. However the Act gives no room for further appeal from the decision of the minister. The full-length of the provision reads that:-

“ Any person aggrieved by the refusal of the Administrator-General to grant a certificate of incorporation or to approve a change of name, or by any conditions or directions inserted in any certificate of incorporation, or by the revocation of the incorporation of anybody corporate may within twenty-one days after the notification of such refusal, conditions or directions or revocation, as the case may be, appeal to the **Minister responsible for legal affairs** and the Minister may make such order as the circumstances may require and except as aforesaid **no appeal shall lie against any such refusal, conditions or directions or revocation.**”

This provision implies that the Minister’s decision is final and conclusive. Barring further appeal (*against this quasi-judicial organ*) to the ordinary judicial organs could be interpreted as contravening the constitutional rights, particularly, Articles 13 and 107A of the URT Constitution. Article 13 provides for the right to be heard; and, Article 107A mandates the judiciary as the final authority in dispensing justice in Tanzania.

It is also not certain whether registered organizations under this law are also required to comply with Section 12 of the NGOs Act.

### 2.4.3 Challenges of the Trustees’ Incorporation Act

As it is a case for other laws, the role of the Registrar (Administrator-General) is more on ‘regulating’ or ‘overseeing’ and where necessary ‘punish’; instead of ‘supporting’ and ‘facilitating’ the trustees to manage their entities as a notice from RITA picture below shows:



Photo: Part of the RITA’s Press Statement on the Commencement of Verification of Boards of Trustees

That is a public notice from the Administrator-General on the intension to commence screening or verification exercise of the bodies of trustees. The 2017 notice shows that, RITA's officials will conduct a door-to-door verification of the bodies of trustees to satisfy themselves whether the bodies are functioning according to the law. Technical support, for instance, in a form of capacity building is not one of the visitation agenda.

On the other hand, revocation decisions are alleged by some of the trustees (names withheld) to be arbitrary despite the legal requirement of tendering written notice as explained earlier. Some of the trustees who had their certificates of incorporation revoked in August 2017 claimed that, they just saw their names on the newspapers that, their certificates have been revoked. A total of 238 Board of Trustees were deregistered for irregularities and failure to submit reports for their institutions for a long time. It was a government notice of August 2017 as a piece of newspaper's cutting shows below:

**Figure 3:** A Government Notice to Revoke Registration of Trustees on 11th August 2017

THE UNITED REPUBLIC OF TANZANIA MINISTRY OF CONSTITUTIONAL AFFAIRS AND JUSTICE REGISTRATION INSOLVENCY AND TRUSTEESHIP AGENCY (RITA) TRUSTEES INCORPORATION ACT (CAP. 318 R.E.2002)	
<b>NOTICE OF REVOCATION OF THE FOLLOWING BODIES CORPORATE</b>	
169. UMOJA WA MALEZI YA WATOTO TANZANIA	<p><b>WHEREAS</b> the 30-day notice of intention to revoke the above named bodies corporate is now expired those bodies corporate failed to provide legal reasons why should I impede doing so as provided in section 23 (1) (d) of the Trustees Incorporation Act Cap. 318 R.E. 2002;</p> <p><b>THEREFORE BY THE POWER VESTED UNTO ME I DECLARE THAT</b> the above named bodies corporate are <b>FORMALLY REVOKED</b> and published on Government Notice No. 1215 of 11th August 2017;</p>
170. THE ENTREPRENEURS DEVELOPMENT FUND	
171. THE KAGERA ORPHANS TRUST FUND	
172. TANZANIA FAITH IN ACTION FUND	
173. MASJID NOOR AND MADRASAT WAQFIA	
174. AL-MASJIDU LIHHSANI	
175. MASJID KADATU	
176. MSIKITI WA MWEMBE BARAZANI	
177. ISANGATI DIVISION DEVELOPMENT TRUST FUND	
178. MUSLIM DEVELOPMENT TRUST FUND	
179. AME EL RAFF A S ISLAMIC FOUNDATION	

*Newspaper clip showing list of organizations whose bodies corporate were revoked.*

*Access on 12th August 2017.*

#### 2.4.4 Recommendations – the Trustees’ Incorporation Act

Generally, it is high time this law is amended in order to keep it relevant to the current socio-economic and political contexts as well as best practices of corporate good governance principles. The recommended reforms include:-

- (i) Some of its provisions appear to be outdated – like Section 27 on appeals as explained above. Section 28 on penalties could also be cited as an illustration of outdated provisions. Sub-sections 1 and 3 impose a fine of TZS 1,000 (being USD 0.4), which is relatively little money due to devaluation of the Tanzanian currency at the moment.
- (ii) A need to provide for the internal (institutional) governance of the registered trust funds the way other laws such as the *Companies Act, Cap. 212* are doing.
- (iii) A need to adopt friendly law enforcement mechanism rather than authoritarian approach such as revocation and suspension instead of guiding and facilitating

(iv) Administratively, there is need for the Administrator-General to find time meeting or creating a platform where he or she will be meeting and interacting with the CSOs registered under this law. This could be made as a statutory forum as it is a case for *Corporate Societies Act*.

(v) **Amendments of specific provisions discussed above.**

## **2.5 SOCIETIES ACT, CAP. 337**

Under this part the Societies Act is discussed based on the gaps and challenges of the Act. After a short explanation about the gaps and challenges recommendations are provided therein as an important part which can be used for reforms and improvement of the CSOs and Societies in particular.

### **2.5.1 About the Act**

This is yet another colonial piece of legislation. It was enacted in June 1954. Its focus is more on 'registration' and not regulation. According to Section 2 of the *Societies Act*, a 'society' includes any club, company, partnership or association of ten or more persons. The law does not reflect a component or requirement of 'charitable.' However, in practice, entities wishing to be registered under this law are supposed to be none business organizations. This is why most of them are members of CSOs in Tanzania as per Figure 2 above.

### **2.5.2 Gaps of the Societies Act**

The legal gaps under this law include the legality and wide discretionary powers of the President of Tanzania and Registrar of societies. Unlike other CSOs' related laws, this one brings in the President of the country in the regulation and control of CSOs registered under this law. It seems that, the law has maintained the colonial style of administration whereby, the Governor of the country used to have such huge powers even for charitable groups like societies. It should be noted that the legality of a society lies on its registration. However, the law does not guarantee a registered society sufficient legal protection. This is mainly due to the challenges stated below.

#### **(i) Legal Personality**

A society does not enjoy a status of legal personality which means it cannot sue or be sued in its own corporate name and hold and dispose property. For a Society to acquire this status it must first establish a board of trustees registered under the Trustees Incorporation Act. Also a society is not allowed to acquire assets unless it registers a board of trustees which has powers to acquire and dispose properties. This is different from other entities such the NGOs registered under the NGOs Act (2002), Companies under the Companies Act and Trustees under the Trustees Incorporation Act.



**(ii) Powers of the President to revoke the registration and operation of Societies**  
**Section 8 of the societies Act states (quoted in full):-**

*(1) It shall be lawful for the President, in his **absolute discretion**, where he considers it to be essential in the public interest, by order **to declare to be unlawful any society** which in his opinion—*

- a. is being used for any purpose prejudicial to, or incompatible with, the maintenance of peace, order and good government; or,*
- b. is being used for any purpose at variance with its declared objects.*

*(2) Any society declared by order of the President to be a society dangerous to the good government of Tanzania under subsection (2) of section 67 of the Penal Code, shall be deemed to have been declared to be unlawful under the provisions of this section and every such order shall be deemed to have been made under the provisions of this section and shall continue in force until revoked under this Act.*

*(3) The President may at any time revoke or vary an order made or deemed to be made under this section.*

*(4) Every society against which an order under this section is made or deemed to be made shall be an unlawful society.*

*(5) Where an order is made under this section in respect of a registered society or exempted society, such order shall operate immediately to cancel such registration or rescind such exemption, as the case may be.*

*(6) No society against which an order under this section is made or deemed to be made shall be registered under this Act or be exempted from such registration or be entitled to make application for registration.*

[Emphasis supplied].

**(iii) There is no room for appeal against the decision of the President**

The decision of the President under Section 8 of the act is final and conclusive as the law does not offer an avenue for appeal to challenge the decision of the President. Moreover, the law does not compel the President to give the society concerned an opportunity to be heard. All these are contrary to the provisions of the Constitution as mentioned elsewhere in this compendium.

**(iv) Powers of the Registrar**

According to Sections 13 and 14 of the Societies Act, the Registrar of Societies is given discretionary powers of refusing to register a society. Grounds for refusal to register include when *'it appears to him (Registrar) that such local society is being or is likely to be used for any purpose prejudicial to, or incompatible with the maintenance of peace, order and good government.'* The Registrar can also in his own discretion, cancel registration of the society on the same grounds as per Section 17 of the law.



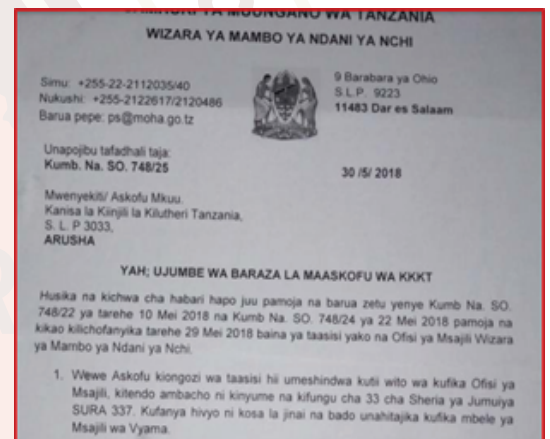
## (v) No Appeal shall be brought against the Decision of the Minister

Section 19 (1) of the *Societies Act* allows an appeal against the decision of the Registrar to refuse registration or cancel the same. The provision directs an aggrieved person to prefer his or her appeal to the Minister within 21 days from the date of Registrar's refusal or cancellation of registration. Sub-section 2 of this provision (Section 19) declares that '*on any such appeal the decision of the Minister shall be final.*' Again, this kind of provision is prejudicial to the constitutional rights under Articles 13 and 107A of the URT Constitution as it is elucidated above.

### 2.5.3 Challenges of the Societies Act

Putting wide discretionary powers in the hands of the President and Registrar (against the registered societies) is one of the serious challenges of this law. Other challenges (already discussed under other laws) include centralization of the registration process, which is both time consuming and costly as members of a seeking registration of their will have to travel to Dodoma to process the registration which costs around TZS 1,000,000 quite a dear sum for a nascent organizations .

The discretionary powers mentioned above include calling for any information and summoning a person to appear before him or her. For instance, in May 2018, there was a letter circulating in social media allegedly from the Registrar of Societies. The said letter, part of which is featured below, claimed that, the Chairperson or Archbishop of the Evangelical Church of Tanzania popularly known as '*Kanisa la Kiinjili la Kilutheri Tanzania*' (KKKT) was summoned to appear before the Registrar under Section 33 of the Societies Act, but he failed do so.



Other claims or orders laid in the letter included (i) non-payment of statutory fees; (ii) informing the Registrar of the changes in leadership made; (iii) the church to request Registrar's permission before amending its 1960's constitution; and, (iv) the church to revoke its 'religious circular' released during Easter through the KKKT's Bishops Council because the council is not statutorily recognized by the Registrar.<sup>12</sup>

### 2.5.3 Recommendations - the Societies Act

Apart from a set of recommendations already stated for other laws, it is further recommended that:-

<sup>12</sup> The KKKT's circular, like of Tanzania Episcopal Conference (TEC) of Roman Catholic's Bishops highlighted some concerns of deteriorating human and democratic rights in Tanzania including freedoms of assembly and press. A Moslem association also had a circular with same concerns release in 2018

- (i) As it is suggested earlier under the *Trustees Incorporation Act, Cap. 318*, the laws governing CSOs should be reviewed from being authoritarian to becoming friendly to the growth of this sector in Tanzania.
- (ii) The laws should be amended to reflect the public-private partnership spirit which is now a world-order of governance. It was old governance style to have one pillar (public sector) pushing other pillars to comply with its interest. A time has come now that, the State and other sectors including CSS work in harmony.
- (iii) Amendment of specific provisions discussed above.

## 2.6 COMPANIES ACT, CAP. 212

The Companies Act, Cap. 212 is another law which provides for the registration and operation of another form of CSOs in Tanzania. In particular the Act provides for the registration and operation of companies limited by guarantee. Under this part therefore gaps, challenges and recommendations are discussed.

### 2.6.1 About this Act

There are three types of companies, namely companies limited by shares; limited by guarantees; and unlimited companies. The CSOs are registered as company limited by guarantee without share capital.

### 2.6.2 Gaps of the Companies Act

There are a few gaps on the contents of some of the provisions of this law. Those are mostly in relation to the governance of the entities registered under this law as it is discussed below.

#### (i) Governance of the Companies

The *Companies Act* establishes three layers of administering the two companies; namely, the Annual General Meeting (AGM); the Board of Directors; and, the Management. The law allows the founders or subscribers to be the first directors and members of the company – therefore, to act as members of all three layers. The law is silent as to when the founders could separate themselves from the three layers as a way of enforcing corporate good governance principles (checks-and-balances).

As such, some CSOs registered under this law have used this loophole to work as management team, board of directors and AGM members at the same time. This trend has continued to perpetuate the feeling of ‘founder-syndrome’, in such a way that, the new comers within the organization have been regarded as ‘strangers.’ Moreover, this situation tarnishes the image of CSOs before the government, development partners and members of the public; and, therefore, endangers the growth of the CSS.

Some of the CSOs which were operating through these loopholes failed to sustain and collapsed. One of which was a fast-growing legal aid provider, which had opened regional branches into about 10 regions. After hardly five years of its establishment, the organization collapsed due to, among allegedly other reasons, none adherence of corporate good governance principles e.g absence of accountability and transparency.

## **(ii) Submission of Annual Reports**

The Companies Act requires all companies to file annual returns to the office of the Registrar of Companies. This requirement is provided for under Section 128 of the Companies Act, 2002. Every Company is required to file annual returns on every return date which is one year's anniversary from the date of incorporation of the company. On the other hand, the requirement to attach audited financial reports with annual returns lies upon public companies. This is in accordance with Section 132 of the Companies Act, 2002. Private companies are relieved from the obligation to attach audited financial reports together with their annual returns.

## **(iii) Link Between the Companies Act and NGOs Act**

The *Companies Act* is also silent on its linkage with other laws governing CSOs in Tanzania. For instance, while Section 12 of the NGOs Act demands compliance of even companies limited by guarantees, the Companies Act does not make any reference to that in terms of synchronize statutory obligations such as annual returns, etc.

### **2.6.3 Challenges of the Companies Act**

**The following are the challenges which can be observed under the Companies Act.**

#### **(i) Misuse of the Powers conferred to the Registrar of Companies**

In some circumstances the Registrar of Companies has been misusing the mandate given to him under the Act. For example on 8th day of February, 2017, the Business Registration and Licensing Agency "BRELA" issued a public notice requiring local companies and locally registered branches of foreign companies to file all overdue annual returns and financial audited reports as per the requirements of the Companies Act, 2002. The notice gave three months time frame for all companies to ensure that they comply with the order.

The requirement to file annual return is provided for under Section 128 of the Companies Act, 2002. Every Company is required to file annual return on every return date which is one year's anniversary from the date of incorporation of the company. On the other hand, the requirement to attach audited financial reports with annual returns lies upon public companies. This is in accordance with Section 132 of the Companies Act, 2002. Private companies are relieved from the obligation to attach audited financial reports together with their annual returns.

The Chief Executive Officer for BRELA in his notice to companies stated that companies are required to file their annual returns and audited financial reports within three months from the date of notice, that is, 8th May 2017 which contravened Section 128 of the Act. The consequence for failure to comply with the notice would entail striking off the Company's name from the Companies' register. In addition, court action shall be preferred against the owners of the Company.

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<sup>13</sup> Note that, a company limited by guarantee is a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of it being wound up.

## **(ii) High costs of registration of a company limited by guarantee**

As it is indicated in the volume one of this compendium, the procedures for registration of the three types of companies mentioned earlier are the same; but, the fees are different. It costs about TZS 500,000 for a limited by Guarantee Company to be registered and incorporated under the *Companies Act*. The fees are regarded as relatively high for CSOs because they are purely charitable organizations. The CSOs are also required to file annual returns which attract some payments as well.

## **(iii) Challenges under electronic registration process**

Despite the introduction of e-registration procedures by BRELA, there are still some challenges associated to registration requirements one being a requirement to have national identity card. Moreover, the e-registration process is a bit complicated and limited in terms of uploading procedures and absence of good internet coverage for the rural based prospective CSOs. This is a challenge especially because BRELA is not physically accessible in other regions apart from Dar es Salaam and Dodoma.

## **(iv) Time consumed during registration of the Companies**

During the process of registration of companies there are several challenging situations which are likely to cause delays. However most of challenges have been addressed by the BRELA by the introduction of an online system which is being used to apply for registration of companies and also for filling other documents such as annual returns and other documents which are required to be submitted to the Registrar as a requirement of the law.

## **(v) Companies limited by guarantee and Tax compliance**

After its registration a company limited by guarantee becomes a legal entity which is required to comply with the laws and regulations of the country, including complying with the laws and regulations which govern tax. The newly registered company will be required to pay all taxes unless otherwise the company applies to the Commissioner General of Tanzania Revenue Authority (TRA) for tax exemption as a charitable organization. This is fully covered under Chapter 5.<sup>13</sup>

### **2.6.4 Recommendations – the Companies Act**

(i) The gaps highlighted above suggests for the specific amendments of the same, the critical one being on the governance of the companies limited by guarantee.

(ii) There is a need to align provision of this law with Section 12 of the NGOs Act as suggested earlier specifically for the companies limited by guarantee without share capital (CSOs).



(iii) The online registration system under BRELA should be improved in order to simplify the registration system. Instead of strictly requiring prospective directors of a company to submit National Identity Cards the Registrar may allow the use of passports or other identity cards including voter's identity cards.

## 2.7 GENERAL CHALLENGES AFFECTING CSOs IN TANZANIA

This sub-chapter highlights some key challenges affecting CSOs in Tanzania regardless the nature and place of registrations. Some of these challenges include overlapping of laws, poor coordination, restrictive working environment, security challenges, criminalization of CSOs activities and poor government and CSOs partnership.

As it is hinted above in this part, the functions, coordination and operations in Tanzania are governed by several legal frameworks apart from the four most relevant (applicable) ones discussed above. The CSOs' intersection or contact with other laws is mostly connected to their nature of work or interventions which generally include networking (associations) with various partners, demonstrations, public dialogues, community mobilization, research, opinion surveys, consultative meetings, strategic litigations, petitioning, media engagements and service provisions.

### Practical Issue # V: Advocacy Strategies Against Some State's Actions are Criminalized

Some of those CSOs' engagement strategies such as demonstration, public dialogues and strategic litigations are normally regarded as 'confrontational' advocacy strategies; and others being 'soft' approach to advocacy work. The researches or opinion surveys or media publications which bear contents which are against the interests of some of the leaders in public service or political positions are normally regarded as unpleasant and therefore criminalized as it is discussed in subsequent parts of this compendium.

### 2.7.1 Overlapping of Laws

About 10 different laws govern the legal framework in Tanzania Mainland today with regard to registration of civil societies; The Constitution of URT of 1977 as amended, the Trustees Incorporation Act, Cap 318 [R.E 2002], the Societies Act, the Legal Aid Act of 2017, Cap 337 [R.E 2002], the National Sports Council Act, Cap 49 [R.E 2002], the Companies Act, Cap. 212 and the Non-Governmental Organizations Act, 2002. The multiplicity of laws has brought confusions in the registration and regulation of civil society organizations in Tanzania, Tanzania Mainland in particular.

To effectively achieve the objectives set out in the Policy, in 2002 the NGOs Act was enacted. The Act, together with amendments vide Written Laws (Miscellaneous Amendment) Act (No.2), 2005, basically lays down the legal framework regarding registration and regulation of NGOs/CSOs. Written Laws (Miscellaneous Amendment) Act (No.2), 2005 has defined the term NGO in such wide terms as to include even some organizations which are



commonly known as CSOs. This informs that the wide definition was intentionally drafted to address the issue raised in the NGOs Policy of lack of a clear and common understanding of what an NGO means. It is from this wide definition that other organizations that were initially registered under other written laws before coming into force of the NGOs Act have now been considered to fall within the ambit of NGOs.

The desire to regulate both the registration process and compliance matters about organizations that are regarded as NGOs under the NGOs Act has brought about the enactment of sections 11 and 12 of the NGOs Act and the subsequent amendments vide sections 6 and 7 of the Written Laws (Miscellaneous Amendment) (No.2) Act, 2005.

Section 6 of the Written Laws (Miscellaneous Amendment) (No.2) Act, 2005 states clearly that NGOs/CSOs which have been registered under other written laws are required to apply for compliance before the Registrar and upon the applicant satisfying the Registrar as to the adherence to the required prescribed requirements, a certificate of compliance shall be issued to the applicant; whose status is the same as that issued to a newly registered NGO under the Act.

Sections 11 and 12 of the NGOs Act brings about two categories of CSOs which both require, as per the Act, to be regulated by the NGOs board; those that have been registered under the NGOs Act and those that have been registered under other Acts but have applied for compliance and issued with a certificate to that effect. As noted above, it is clear that CSOs registered as companies limited by guarantee and societies registered under the Societies Act are organizations which fall under the categories of NGOs referred to in section 11 of the Act. This type of CSOs forms a category of organizations which have to apply for a certificate of compliance, whose procedure for application and legal status is the same as the one issued to the newly registered NGOs under the NGOs Act.

Section 11 of the Act only requires those CSOs/NGOs that have been registered under other written laws to file for compliance. In other words, the CSOs/NGOs Act does not prohibit registration of CSOs/NGOs under other written laws, but rather forces such CSOs/NGOs to apply for compliance and be issued with a certificate whose process and effect is as good as the said CSOs/NGO has been newly registered under the Act.

**As part of addressing this problem, THRDC recommends the following;**

- a) The Government is hereby advised to enact the law that shall ensure all NGOs registered under other laws are provided with only certificate of compliance and not fresh registration.
- b) The Government is hereby advised to strengthen the coordination of NGOs at inter-ministerial level to ensure clear and smooth registration and operations of NGOs.
- c) The Government in consultation with CSOs should introduce a one stop center where all CSOs registered under different laws meet for compliance purposes.

## 2.7.2 Government Attitude Towards NGOs

This chapter presents the findings on the views of the stakeholders on the government's attitude towards the NGOs. The government's attitude towards the NGOs sector is a good indicator of the growth of NGOs sector. Tanzania, like many other countries in the world, has strived to maintain good relations with the civil society sector. This is due to the reality that both depend on each other for the socio-economic development of the country. The government has also realized that it cannot develop in isolation from the participation of the third sector and that its development and prosperity are interrelated. This chapter, therefore, presents the views of the NGOs sector with regard to how the government has maintained this spirit either positively or negatively.

Generally speaking, the government does have a positive attitude towards NGOs. However, there are some areas where there is sometimes a misconception of issues. Although NGO's want the government to address several issues to enhance their working environment pertaining to policy and legal environment, it seems to be not a priority for the Government at the moment. This is a major issue that must be addressed to enhance cooperation between the government and NGO sector through policy review and the subsequent review of the NGO law.

- (i) NGOs are a noncompliance group when it comes to taxation which is the priority agenda of the current administration.
- (ii) Government perceives NGOs sometimes as aggressive and threatening to deregister some of them.
- (iii) NGOs works are subsidized not recognized, and appraised save only for few ones which are politically regarded as potential.
- (iv) Flow and sharing of information is very poor
- (v) The government sometimes sees NGOs as competitors
- (vi) The government sometimes sees NGO's contribution to development to be insignificant.
- (vii) The government sometimes feels as if NGOs are allied to opposition political parties.
- (viii) The government sees NGOs as not accountable enough to donor funds
- (ix) The government sometime sees NGOs as enemies and competitors for foreign funds and see them as their critics who add no value to their work

A major related issue is an extent to which the government is pushing for enabling constitutional, legal and policy environment of NGOs. Apparently, the constitutional, legal and policy environment of NGOs is not a priority for the Government. It is a good thing if the push is for improving a sector but if a push targets to restrict NGOs free operations, it will affect much the NGO operating environment.

The consensus is that there are no serious, substantial efforts to improve the enabling environment. The government does not yet seriously see and appreciate the role of NGOs in supporting its development agenda. There had been an expression of the negative environment seeking to restrict freedom of expression and shrinking civic space.

However, recently there have been signs of change. Despite some challenges, there is some goodwill between government departments and NGOs. There is some space to raise voice and to participate. A notable example is the opportunity that the NGOs have been given by the government to be part and parcel of various policy review processes. This is the evidence that there is still a good working relationship between NGO and government in improving the policy environment. However, the constitutional aspect is taking us back; it could work better working on the policy and legal framework in an environment where the constitution is creating an enabling environment.

### **2.7.3 Poor Coordination of all CSOs in Tanzania**

Proper, inclusive and decentralized coordination of the CSOs sector is the fulcrum of effective survival and enhancing good governance in Tanzania. Tanzania CSOs lack national, regional and district coordinating bodies for their smooth operation. Currently there is only one general forum in Tanzania that brings all CSOs together regardless of their thematic areas of operations and this is the Tanzania CSOs 'Directors Forum. This is just an online and loose CSOs Forum in Tanzania under the Coordination of THRDC. There are also thematic based CSOs forums such as Tanzania Human Rights Defenders Coalition, Policy Forum, TANGO, TGNP-Mtandao etc.

In other words, specific independent authorities to coordinate CSOs operations and ensure proper coordination, self-regulatory and sustainability of CSOs should be established at national, regional and district levels. Moreover, the capacity of CSOs Coordinators at these levels should be improved to be able to guide and provide technical support to COSs so that they comply with policy and legal frameworks. However, this role is currently pushed by THRDC, an umbrella organization for human rights defenders in Tanzania. The THRDC is currently coordinating CSOs on various key issues affecting the sector. THRDC also disseminate different guidelines that govern NGOs and CSOs in Tanzania.

### **2.7.4 Poor Partnership Between CSOs and the Government**

Although the Government recognizes the imperative of strengthening the partnership between Government and the CSOs sector, it has not done much towards that goal. As stated earlier on there are no sufficient policy and regulatory efforts to promote partnerships and cooperation between CSOs and the Government. Therefore CSOs propose the following to improve CSOs and the Government Partnership:

The Constitution of the Tanzania (cited above) provides for the rights and freedoms of, among other things, association, assembly and information. Despite the fact that there is no specific or direct provision on the space of CSOs, these and other rights are impliedly supposed to be enjoyed by any person or institution including CSOs. However, there has been a number of legislation enacted in recent years (between 2015 and 2018) which restrict CSOs' enjoyments of such rights. These legislation includes, the Statistics Act of 2015 and its 2018 amendments; the Cyber Crime Act of 2015; and, the Media Services Act of 2016.

Section 37 of the Statistics Act, 2015 generally limits publication or communication of statistics, including the micro ones without authorization of the National Bureau of Statistics (NBS). Furthermore, according to the APEA study of January 2018, this law introduces uncertainty in terms of who is allowed to generate statistics and what authorization is required to publish them. In a review of the law, TWaweza noted in 2017 that the rules around the dissemination of survey micro-data are unnecessarily restrictive and appear to be inconsistent with principles of open government and open data. Mr. Zitto Z. Kabwe, ACT Wazalendo opposition party leader was the first to be charged under the Statistics law since it came into force in 2015 by suggesting that official economic growth data from the Bank of Tanzania (BOT) had been manipulated.<sup>14</sup>

On the other hand, according to the same APEA study of 2018, the Media Council of Tanzania (MCT) review of the Media Services Act of 2016 found several provisions limiting freedom of the press. The law gives the government powerful means to control individual journalists. In March 2017, the President told media owners to 'be careful' and 'watch it' as they should not think that they have freedom 'to that extent.' Moreover, the Tanzania Communication Regulatory Authority (TCRA) heavily fined four television stations (in January 2018<sup>15</sup> for what it termed violating broadcasting regulations. The fined TV stations had reported of the Legal and Human Rights Centre (LHRC)'s by-elections observation report without 'balancing the coverage' with the electoral commission.

There has also been a ban on newspapers. For instance, in 2016, Mr. Nape Nnauye, the then Minister for Information, Youth, Culture, Arts and Sports, ordered a ban on the printed weekly Mawio for 'inflammatory' reporting. In June 2017, another appointed Minister for the same Ministry, Dr. Harrison Mwakyembe also banned on this newspapers for two years on the same claims. Both ministers used the Media Services Act in making their decisions. Due to these threats and treatments, it has increasingly becoming difficult to engage with the media especially on critical issues which appear to be alternative views to what the government and its leadership plan or proclaim.

<sup>14</sup>The penalties stipulated in the Act are high with fines ranging from about USD 500 to USD 5000 and/or imprisonment for six months, one year or three years – all as minimum penalties for different violations under the Act.

<sup>15</sup>Freedom House, 'Applied Political Economy Assessment', January 2018, Tanzania. The footnote is wrongly placed



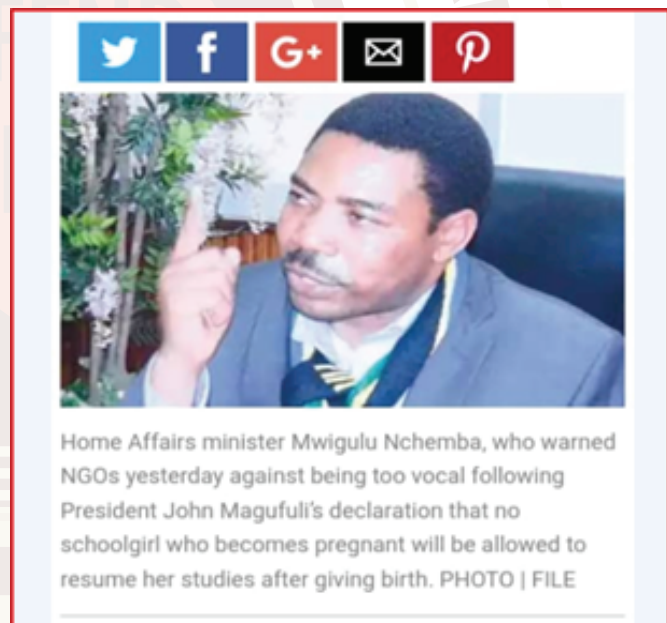
Mawio, Mwana Halisi and Mseto were all banned for contravention of the Media Services Act, 2016. They all went to court to challenge the decision to be banned and the court ruled out that the said newspapers should continue with their operations/publications. The government has however, been adamant in heeding to the orders of the court. The move is now underway to file cases of contempt of court orders.

The application of Cyber Crime Act has also been stumbling block to CSOs work as well as individuals. For example, during the 2015 general elections, LHRC with accreditation of observer status from the National Electoral Commission (NEC) had its electronic devices including 27 Computers and 25 mobile phones confiscated by the Tanzania Police Force. Members of the Observation team were also arrested. It was alleged that, the organization was issuing unofficial presidential results. In July 2016 the Police returned the confiscated devices without taking any legal action.

Otherwise, there have also been some informal threats limiting the operation of CSOs in Tanzania. For instance, in 2017 the government launched a countrywide screening or verification exercise, which was monitored by THRDC. There have also been some statements from ministers which could be interpreted as threats to CSOs including those against the Tanganyika Law Society (TLS)

**Photo:**

The newspaper clipping showing the former Home Affairs Minister warning NGOs against criticising President's decision on readmission of school girls after delivery. This was in 2018.



The scrutiny and over-regulations of CSOs including their internal affairs such as financial management and transparency are increasingly regarded as open-threats to NGOs. An outspoken opposition party leader Mr. Zitto Kabwe twitted on his account in October 2018 that, some of the CSOs were 'hunted.' Therefore, NGOs should start questioning the State about this new trend following the release of the new NGOs regulations in October 2018.





**Photo:** Media clips with bold titles ‘NGOs Tightened’ following the Release of the NGOs regulations in 2018. Top left is a tweet from Hon. Zitto Kabwe alerting NGOs to wake up and question the government.

This being also the concern of CSOs’ directors they organized a forum in Dodoma city, which brought together CSOs and representatives from the government ministries from 22nd to 26th October 2018 under the coordination and facilitation of FCS. The CSOs wanted to show case their work and interventions and their great contribution towards the country’s development.

**Photo:** A flier of the CSOs exhibition in Dodoma in 2018.



They exhibited, conducted workshops and networked with the government and parliamentary officials. A separate assessment has to be conducted to measure level of impacts gained out of this initiative. But generally, it was a good start to guide the government understanding the role and contribution of CSOs in the country.

**Practical Issue # VI: Several directives on CSOs within a month – without involvement of CSOs**

Apart from October 2018’s two directives (the regulation and a letter from the government to NGOs as discussed earlier, the following month, November 2018, another Ministry (for regional administration and local government – TAMISEMI) instructed the regional administrative secretaries (RAS) of Mainland Tanzania to prepare and send lists of NGOs operating in their areas of jurisdictions. The letter to RAS dated 5th November 2018 (reference number JC.156/254/01”H”/58), titled ‘Orodha ya Mashirika Yasiyo ya Kiserikali’, signed by Dr. Andrew Komba, indicated that, the lists were needed for the national database. The lists were to indicate names of the organization, objectives, areas of work, and names of the officials. Urgent as it is, the lists were to be submitted to Registrar of NGOs by 14th November 2018. All these happen without clear indication of the motive especially because those who are concerned (CSOs) were not informed of the processes.

Some Government officials and private actors sometimes consider NGOs as enemies, power mongers or groups of people who instigate public disobedience. As a result, threats towards active NGOs have been recorded. Some NGOs Officers have been arrested and there have been interference with internal meetings, threats to deregister and constant surveillance of some NGOs.

Therefore, THRDC calls upon the government to create an enabling environment for NGOs to operate freely according to the laws without being subjected to any threats or illegitimate interference. This include allowing them to engage in lawful advocacy and lobbying activities. Also developing a guideline or strategy that protects NGOs against any threats.

### **2.7.7 Growth and sustainability of CSOs Sector in Tanzania**

The CSOs sector has been doing a lot but the level of sector development is still very poor. The CSOs sector still lacks resources, professionalism and competence in certain areas of their operations. Many CSOs survive for a short period and disappear; only a few CSOs in Tanzania have managed to survive more than 10-20 years of their first operations. This is because of many factors, both external and internal factors. Most NGOs are not exempted from tax payment.

Tanzania needs to create an enabling and conducive environment for the growth, development and sustainability of CSOs in Tanzania. This may include:

- a) The creation of a multi sector strategy that allows the growth and sustainability of CSOs
- b) A national forum of CSOs/NGOs shall be put in place and meet once a year with government officials, the private sector and development partners to discuss the sustainability of the NGOs sector
- c) The government shall explore innovative measures to support the growth and sustainability of NGOs such as tax exemptions and tariffs.

### **2.7.8 Effective CSOs Self-Regulatory Framework**

Currently in Tanzania, there is no an effective CSOs self-regulatory mechanism that allows CSOs regulates and disciplines them. These self-regulatory mechanisms will set the specification of monitoring and other forms of performance measurement, the rules governing disclosure of monitoring information, and the specification of sanctions in cases of non-compliance.

Tanzania needs an effective, sectorial and multisectoral CSOs self-regulatory framework at all levels. The government and NGOs/CSOs have to promote freedom and autonomy of CSOs

and create an enabling environment for self-governance and self-regulation. This may include creating an environment for NGOs to regulate themselves at sectoral levels through their networks and other established mechanisms. On the other hand CSOs have to develop internal mechanisms to regulate and restrict individuals working in the NGOs sector from taking direct leadership or contest for political posts while still holding positions in their respective NGOs.

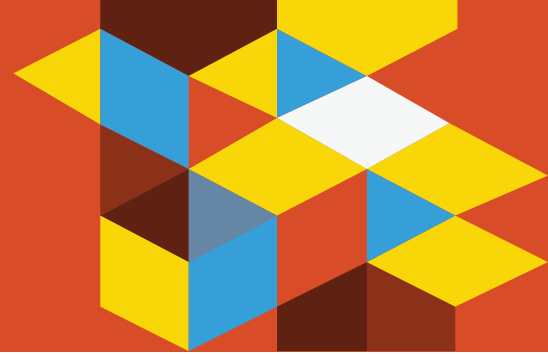
### **2.7.9 Operations of International NGOs and other International Entities**

The current trends indicate that there are an increasing number of international NGOs operating in Tanzania at the expense of local NGOs. The practice requires joint venture with local NGOs, but the situation on the grounds indicates that there is a significant number of INGOs operating in different parts of the country some time doing work that could be done by local NGOs. If this practice is left unregulated then almost all local NGOs will have nothing to do or will have all their sources of funds channelled to INGOs and other UN agencies. This practice has affected the participation of NGOs in development programs and other democratization activities such elections as it was in 2015.

THRDC call the government to develop a clear mechanism on how INGOs and other international agencies can operate in Tanzania without harming the space of local NGOs. This may include the requirement that INGOs to work jointly with local NGOs while improving their capacity and growth at all levels.

# CHAPTER THREE

## CHALLENGES OF LAWS GOVERNING RESEARCH AND PUBLICATIONS IN TANZANIA



### 3.1 INTRODUCTION

This chapter addresses some practical concerns regarding the application of the laws and regulations governing research and publications activities in Tanzania. As the case in previous chapters, this too focuses on interventions by CSOs only. The researches and publications are important ingredients of the enforcement of the right to information, which is guaranteed under Article 18 of the *Constitution of the United Republic of Tanzania of 1977*. The said provision states that, ‘every person has a right to information on events and developments inside and outside Tanzania that is relevant to his or her being and also to be informed on the general matters relevant to the society.’

The researches and publication activities are governed by a number of laws – depending on the nature of the research. As it has been mentioned in the first volume of this compendium, the laws include, the *Tanzania Commission for Science and Technology Act of 1986*; the *National Institute of Medical Research of 1979*; the *Copyright and Neighboring Rights Act of 1999*; the *Records and Archives Management Act of 2002*; the *Access to Information Act of 2015*; the *Statistics Act of 2015*; the *Cybercrimes Act of 2015*; and, the *Media Services Act of 2015*. There are also several regulations on the same, including the *National Research Registration and Clearance Guidelines of 2018*; and recently formulated ones termed as the *Electronic and Postal Communications (Online Content) Regulations of 2017*.

This chapter considers both theoretical and practical issues of concern on some of these laws. Section one of this chapter focuses on some gaps within the law; while, section two is on the practical issues of concerns pertaining enforcement of some of these laws.

#### Note: Essence and Importance of Researches for CSOs and Partners

According to a quick survey conducted during the preparation of this compendium, at least 90% of CSOs in Tanzania are advocacy-based organizations. Only a few of them are purely service providers without any form of advocacy engagement. Therefore, advocacy is one of the core functions of the CSOs in Tanzania. The contemporary approach to advocacy requires evidence. This is commonly termed as ‘evidence-based’ or ‘data-driven’ advocacy approach. Evidence and data are obtained through researches (studies, baseline surveys, assessments, evaluations, desk review analysis, etc). Therefore, research is one of the crucial components of the advocacy work. On the other hand, CSOs researches are important for the other users including the government itself. Clause 4.4.5 of the Research and Development Policy of 2010 of Tanzania makes it clear that, the government needs complementary inputs from CSOs in terms of knowledge, information, capacity building, etc. Moreover, CSOs are regarded as important players in setting research priorities.



## 3.2 COMMISSION FOR SCIENCE AND TECHNOLOGY AND NIMR LAWS

### 3.2.1 About COSTECH and NIMR

The Commission for Science and Technology (COSTECH), which is established and governed by its 1986 legislation is vested with overall supervisory powers of all scientific research in Tanzania. However, there are a number of institutions which are vested with statutory powers to coordinate specific research areas such as those linked to cancer, orthopedics, HIV/AIDS, food, drugs, chemicals, medical, wildlife and the like. Some of these other institutions are discussed in subsequent parts of this compendium.

It is therefore that, the Tanzanian legal system is very wide. Its legal framework on researches consists of rules and regulations from those enacted by the parliament to those formulated by other statutory and professional bodies.<sup>16</sup>

The most relevant research institutions for the nature for CSOs' work are COSTECH, the National Institute of Medical Research (NIMR); and, the National Bureau of Statistics (NBS). The NIMR is governed by its 1979 legislation; while, NBS is governed by the Statistics Act of 2015.

### 3.2.2 Gaps of COSTECH and NIMR Laws

Both laws and their governing institutions provide some procedures for all researchers to follow. There has not been a clear flow of procedures especially due to overlapping of mandates of these institutions. It was until mid-2018 when COSTECH came out with the National Research Registration and Clearance Guidelines of 2018, which try to synchronize the procedures especially when the researches involve medical, public health and human subjects (overseen by NIMR); clinical trials (overseen by the Tanzania Food and Drugs Authority (TFDA)); and, Wildlife and Natural Resources Conservation (overseen by the Tanzania Wildlife Research Institute (TAWIRI)).

Another gap is that, none of the existing authorities directly govern the social scientific studies such as on gender and human rights. It should be noted that, the COSTECH law is predominantly on science, technology and innovation researches; while the NIMR law is mainly for medical researches. The only section within the COSTECH law mentioning social science is Section 14(3) which mandates COSTECH to establish research and development advisory committees, including on social science. Unlike other regulatory authorities, which have created a space for CSOs and other non-governmental actors, the COSTECH law is silent.<sup>17</sup> The Statistics Act of 2015 seems to



be a general one, covering all types of statistics. However, this too does not cover qualitative social scientific researches.

This is a huge gap on the Tanzanian legal framework on researches. The social scientific studies, especially on human rights have their standards to observe, including, adherence of Human Rights Based Approach (HRBA) theoretical framework. Lack of specific framework or addressing of social scientific (human rights) research components has created a challenge of approving such kinds of studies according to the experience of some of the CSOs which have tried to conduct their studies through some of these regulatory institutions.

### **3.2.3 Challenges of Engaging in Research Activities**

There are several public institutions mandated to govern research activities in Tanzania. Those include the COSTECH; the NIMR; NBS; the Regional Administrative Officers (RAS). Moreover, depending on the nature of the studies, other institutions mandated to grant 'permits' or 'clearance' are sectoral institutions such as TFDA e.g for clinical trials; and, the TAWIRI e.g for wildlife related studies. Academic institutions such as universities and some of the private institutions such as Amref and Ifakara Health Institute (IHI) do also have their own ethical clearance committees for some of the studies.

Most of the CSOs normally conduct social scientific researches which do not necessarily required to be sanctioned by COSETECH and NIMR as prime research authorities in Tanzania. However, as it is indicated in volume one of similar compendium, the permission from NBS is mandatory even for micro-data.

An engagement in research activities by CSOs has increasingly becoming a challenge due to a number of reasons according to CSOs themselves. Some of the challenges include insufficient funds to pay for statutory fees to NBS; costs associated to data collection; bureaucratic procedures to start researches at regional or district levels e.g RAS has to authenticate the permission and study mission; complying with requirements of the Statistics Act of 2015(obligation to engage with NBS); and, reactions of the some of the government leaders and other audience after the publication of the research results.

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<sup>16</sup> Adv. Clarence Kipobota's analysis in the Training and Resources in Research Ethics Evaluation, Accessible through: <https://elearning.tree.org/mod/page/view.php?id=171> However, media sources suggest that, it has been, administratively, working with non-state actors through meetings and clearance of their research protocols (proposals).

<sup>17</sup> However, media sources suggest that, it has been, administratively, working with non-state actors through meetings and clearance of their research protocols (proposals).

One of the notable cases which could illustrate the last mentioned challenge is that of TWAVEZA, which found itself in legal wrangle with COSTECH after releasing its public opinions' results in July 2018. TWAVEZA, a local NGO, usually conducts surveys to collect public opinions on various socio-economic and political trends. It then publishes them as 'Sauti za Wananchi.' Unlike its previous findings, which were, generally, criticized by some researchers for various reasons (normal academic critics), this time around COSTECH, 'intervened.' Through its letter dated 9th July 2018, reference as CST/SC.186/1145/2018, signed by Dr. Amos Nungu, COSTECH instructed TWAVEZA to 'show cause' why they should not be taken to task for violating research procedures. The full length of the letter is worth quoting it here:

**“** *Tanzania Commission for Science and Technology (COSTECH) is an apex body and main adviser of all matters related to Science, Technology and Innovation in Tanzania under the COSTECH constitutional Act No 7 of 1986 (Cap. 226 rev 2002). Among its core mandates is to register and provide clearance of all research (short term research including studies, medium and long term research) conducted in the country. The COSTECH database shows that previously TWAVEZA applied for 'Research Clearance' for four projects as indicated in the Appendix. One project is completed while three are going. However, over the weekend there was information regarding TWAVEZA's new research project known as 'Sauti za wananchi.' Since the Commission doesn't have any record of, having granted to TWAVEZA a permit or pending application on the same, the publication is in violation of Section 11 of the National Research Registration and Clearance Guidelines by failure to register a research project with COSTECH. Thus, you are hereby required to show cause, within seven days from the date of this letter, why appropriate legal action should not be taken against your organization by the relevant authority.”*

It is unusual (at least basing on the experience) for the research regulatory authority to react swiftly and strongly to research findings. The new trend by COSTECH raised doubts and instigated public debate. Two things were on the social media domain. Firstly, whether COSTECH has mandates over social scientific studies like the one conducted by TWAVEZA. This was particularly a case because the law and its letters put it clear that they are overseer of science, technology and innovation (SEI) studies. The TWAVEZA study was not SEI. Secondly, were the procedures or results of the findings were issues of concerns for COSTECH.

The research in question revealed that, the popularity of current President of Tanzania had steadily dropped down from 96% in 2016 to 55% in 2018. The alleged 96% was stated by some analyst to have been the highest recorded rating in the country's history; while, the 55% was also claimed to be the lowest rating in country's history. The findings alleged further that, despite the decreased popularity of the top leadership, the citizens were largely supporting Chama Cha Mapinduzi (CCM) candidates. The saga resulted with the confiscation of the passport of the Executive Director of TWAVEZA. Previous findings which favored the governance style and decisions did not put this same organization in trouble. The outcome of this saga is yet to be known.

It should be noted that, apart from TWAVEZA, other organizations with researches or procedures or findings had put them into trouble with the regulatory authorities includes SIKIKA, HAKI ELIMU and LHRC.

SIKIKA, the pro-health rights organization had its Social Monitoring Accountability (SAM) project or activities suspended by the Kondo district council's councilors. The reasons for the suspension were not clear, but it was connected to the findings of the SAM committee members who were following up and investigating on the public fund expenditures in the district. This was against the interests of some of the ward councilors.

HAKI ELIMU, the pro-education rights organization had the airing of its TV media spots stopped by the TCRA Contents Committee alleging that TV spots which raised awareness on the plight of lack of toilets and poor sanitary facilities were 'unethical content.'

LHRC published its by-elections' observation report in December 2017 which showed that in some areas there were rampant elections malpractices in some of the polling stations. TV stations which covered the LHRC press conference on the by elections were penalized by TCRA for not 'balancing' their reports with the National Electoral Commission (NEC).

### **3.2.4 Recommendations – the Research Laws**

Basing on the gaps and challenges highlighted above, it is suggested that:-

- (i) There is a need to adopt a specific and comprehensive legal framework on social scientific (human rights) studies.
- (ii) There is a need to define 'research' in order to exclude interventions such as mere monitoring of elections or projects; evaluation of the projects or programs; or, baseline surveys from going through ethical clearances. Currently, it seems that everything is a 'research' needing such clearance.
- (iii) There is a need to synchronize and simplify research clearance procedures e.g by designating one of the institutions as a one stop centre for the clearances.

### 3.3 STATISTICS ACT OF 2015

#### 3.3.1 About this Act

The Statistics Act of 2015 was enacted to strengthen the NBS and national statistical system. The functions of the NBS are mentioned under Section 6 (2) of the law, which include, developing methods, standards, concepts and definitions for production for the official statistics; and, regulating official statistical information.

#### 3.3.2 Gaps and Restrictive Provisions of the Statistics Law

Among other gaps or restrictive provisions, the law centralizes collection, analysis and dissemination of official statistics under the hands of NBS. For instance, Section 9 (1) of the *Statistics Regulations of 2017*,<sup>18</sup> made under Section 38 of the Statistics Act of 2015 directs that:-

**“** *The Bureau shall, for the purpose of maintaining informality and comparability during collection, analysis and dissemination of official statistics, prepare and maintain:-*

- a) *Concepts, definitions and standards to be used by the data producers.*
- b) *Quality assurance guidelines which meet national and international standards; and*
- c) *Dissemination and communication guidelines for official statistics.”*

Being a government agency, apparently, NBS would not ‘accept’ or ‘authorize’ publication of research statistics which are, for instance, against the position of President especially for the matters which he has already made a position. The Minister of Constitutional and Legal Affairs was quoted by media in 2018 clarifying that, President’s statement is a ‘decree.’ With this kind of interpretation of President’s statements, NBS or any other agency would not sanction study or publications against the same.

Moreover, these kinds of provisions will definitely undermine academic freedom as the researchers will be compelled to adopt ‘concepts’ and ‘definitions’ or ‘standards’ which NBS considers suitable and not basing on academic theoretical frameworks.

Other restrictive provisions include Section 37 of the Statistics Act. This provision is on offences and Section 37(1) (b) is of particular concern as it provides that, ‘any person, who without lawful authority, publishes or communicates to any person otherwise than in the ordinary course of his employment any information acquired by him in the course of such employment, commits an offence ...’ The punishment for such offence is a fine of not less than two million shillings (approximately USD 875) or to imprisonment for a term of not less than six months or both.

<sup>18</sup> G.N No. 46 of 24th February 2017



As it is explained further in this compendium, researches and dissemination of information are some of the key intervention strategies of the CSOs. Moreover, ‘any information’ as reflected in the said provision is a vague term and generally contradicts with Article 18 of the URT Constitution. Sub-clauses 3 and 4 of the Statistics Regulations of 2017 add more weight in CSOs’ engagement in studies. The provisions empowers NBS to provide ‘guidance on professional skills’ required in the production of official statistics for ‘quality assurance’; and, NBS to coordinate ‘identification of types of statistics’ produced by agencies (including CSOs).

Thirdly, application of researches or production of the information is not for free. There are fees attached, which could be a challenge for CSOs to afford based on their slim budgets. The fourth schedule to the Statistics Regulations of 2017 provides for the fees and charges. Part of those fees and charges are indicated in Figure 4 below:

**Figure 4:** Fees and Charges under the Statistics Regulations of 2017

*(Made under regulations 10(3) and 14)*

Fees and Charges			
(a) Fees			
	Service	In case the service is rendered to a citizen (TZS)	In case the service is rendered to a non-citizen (USD)
<b>1</b>	Scrutinizing requests for approval to undertake a survey/census for official statistics, Quality control, and quality assessments	1% of the total budget	1% of the total budget
	Designing of Methodology		
	(i) Sample Design	2,500,000	2,500
	National Level		
	Regional Level		
	District Level		

Other countries especially in Asia and Scandinavia allocate a lot of funds from their national budgets to support research activities in support of their development agendas. Tanzania allocates only around 1% of the total national budget for researches. Therefore, there is very little public funding especially for practical social scientific researches which are mostly conducted by CSOs. Surprisingly instead, the Tanzanian legal framework on statistics and research seeks to control and limit further the conduct of studies and researches as exemplified in the Statistics Act and regulations. Some members of CSOs and academia interpret this kind of current framework as being ‘overprotection’ of the government for political reasons, because, in practice unofficial statistics which support or favor positions of the government are normally not subjected to NBS’ scrutiny. But, the statistical findings which depict opposite opinion such as the ones by TWaweza on the decreased popularity of the president could instigate legal actions against the publisher.

### 3.3.3 Challenges of the Statistics Act and its Regulations

The applicability of the law to CSOs is not vividly stated; but, basing on the phrasing of section 18 of this law and the actions already taken between 2015 and 2018, it is obvious that even CSOs are subjected to this law. Section 18(2) of the law stipulates, among other things, that ‘no person



or agency may authorize the commencement of an official statistical collection except with the approval of the Director General.’ That is withstanding the provision of any other written law, including of COSTECH and NIMR explained earlier. Section 3 of the same law defines ‘agency’ to include NGOs.

The effective application of the law would inhibit the generation and use of data for academic and CSOs’ advocacy purposes as explained above.

The regulations on the process for requesting authorization – e.g. details to be provided with requests, time of process, and clarity on the scope of authorization when provided. The regulations has no permanent committee or permanent secretariat to process requests for authorization hence increases the time required to respond to requests and creates a risk that decisions will not be clear, transparent and consistent.

The Act under section 24B requires that anyone with findings that differ from NBS statistics must now “consult the bureau” before communicating these findings to the public. It is not clear what the implications of consulting the bureau might be, though it still represents an undue restriction on independent statistics. However, given the terms of the new 24B, which goes much further than 24A(2), it’s not clear why this consulting process is necessary.

The new section 24B(1) 3 prohibits anyone from disseminating “any statistical information which is intended to invalidate, distort or discredit official statistics.” There is a problem here, most obviously if any official statistics happen to be incorrect (or even just disputable), then pointing out the problem and correcting it will be illegal. Zitto Kabwe’s case on official economic data is a perfect example – whether or not Zitto was right in that case would be irrelevant here, his actions would certainly be illegal under the amended Statistics Act. Indeed, this effectively outlaws fact-checking unless this confirms that the fact being checked is correct. Further, publication of any statistics that contradict (or merely cast doubt on) official statistics, would arguably be prohibited under this amendment .<sup>19</sup>

The regulations include large increases in the fees charged for scrutinizing requests to undertake a survey/census for official statistics, quality control and quality assessments (from 1% to 5% of total budget); sample design (from Tshs 2.5m/ to 5m/ for citizens and from USD \$2,500 to \$5,000 for non-citizens); and construction of weights (from TZS 2.5m to TZS 5m for citizens and from USD \$2,500 to \$5,000 for non-citizens.) There is nothing in the amended Act that requires any changes to the fees and charges and there is no reason given for such large increases.

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<sup>19</sup> Twaweza Analysis on the Amendment of the Statistics Act, 2015.

### 3.3.4 Recommendations – the Statistics Act

There is a need to amend this law and its regulations in order to allow academic freedom, publication of alternative views, and improving freedom of thought for national development. The law should be amended to simplify the process of authorization by establishing a permanent committee that is able to respond to requests within hours and to cope with several hundred potential requests each day.

All fees and charges should either be scrapped or reduced to a level that is lower than those specified in the previous Regulations approved in 2017.

## 3.4 CYBERCRIMES ACT OF 2015

### 3.4.1 About this Law

The Cybercrimes Act of 2015 gives wide discretionary powers to law enforcement agencies to arrest and prosecute online users for the ‘online offences’ i.e computer systems and Information Communication Technologies (ICT) related crimes. The law is full of offences from Section 2 onwards. At least 25 cybercrimes have been created by this law and could implicate CSOs as well.

The Act prohibits citizens or agencies from obtaining computer data protected against unauthorized access without permission. It empowers police or law enforcement officers to storm the premises of a news agency and confiscate a computer system or device and computer data if law enforcement officials believe that such information can be used as evidence to prove an offence has been committed. The police are equally given the right to search devices like cell phones, laptops or computers if they believe they contain information that can be used as evidence to prove a crime has been committed.

### 3.4.2 Gaps and Controversial aspects of the Cybercrimes Law

The most controversial provision of this law is Section 16. It is on false publication of information. The provision has direct adverse implications to the nature of CSOs work. The provision reads that:-

**“** Any person who publishes information or data presented in a picture, text, symbol or any other form in a computer system knowing that such information or data is false, deceptive, misleading or inaccurate, and with intent to defame, threaten, abuse, insult, or otherwise deceive or mislead the public or counseling commission of an offence, commits an offence, and shall on conviction be liable to a fine of not less than five million shillings or to imprisonment for a term of not less than three years or to both.”

The elements forming an offence of ‘publication of false information’ such as ‘false data’ or ‘deceptive’ or ‘misleading’ or ‘inaccurate’ etc are not defined in the definition section. The section is vague, subjective and therefore prone to abuse. For instance, data could be ‘false’ or ‘misleading’ or ‘inaccurate’ just because it is contrary to the ones published by the government even though the government’s data is incorrect for some reasons (erroneous in publication or outdated). As it is further discussed below, this provision has been notoriously used to arrest some people with an alternative opinions (data) against those which the State believes to be correct.

Secondly, some of the criminalized offences such as ‘pornography’ and ‘pornography which is lascivious or obscene’ (Section 14) have not been defined. This leaves the law enforcement agency with wide discretionary powers to arrest and prosecute any person even by way of ‘blackmailing’ him or her. Those who are critical or against the interest of others could invoke this provision to ‘fix’ their opponents. The CSOs working on sensitive advocacy issues could be easy prey.

Lastly, the law does not give the judges or magistrates adjudicating cases against this law to decide on the appropriate punishment basing on the merit of each case as it is a practice for most criminal offences. Instead, the law in almost all provisions provides for ‘minimum’ punishments, which are severe. The Kenyan Cyber Security and Protection Act of 2016 focuses on setting maximum punishments which the court can impose, which are also not as severe as the Tanzanian law.

### **3.4.3 Challenges of the Cybercrimes Law**

Section 16 of this law has been (quite effectively) used to arrest a number of people, some being individual and NGOs HRDs, journalists under accusations of publishing false and misleading information online. One of the victims of this provision is an online democratic rights activist Mr. Bob Chacha Wangwe. He was charged in 2017 for publishing a false statement on his Facebook social media account that alleged that, Zanzibar was a colony of Tanganyika. Other outspoken online activists such as Abdul Omari Nondo is also a victim of this law having being charged with section 16 of the Cybercrimes Act, 2015 and 122 of the Penal Code, Cap 16. Nondo uttered the word “I am at risk” having been kidnapped by an unknown people. Those words were said to be false and hence he was prosecuted but luckily he won the case against the government. Mr. Yericko Nyerere had also already fallen prey of law enforcers after violating the contents of this law. Another case is the pending case of Emmanuel Kibiki who is journalist based in Iringa. He was charged with publishing false information c/s 16 of the Cybercrimes Act and his case still pending in court of law. It is worth noting that the Cybercrimes Act, 2015 was in 2015 challenged in the high court for breaching the Constitution of the United Republic of Tanzania but the petitioner lost the case while winning in only one provisions out of almost 22 challenged provisions.

In a bid to challenge the constitutionality of the Cyber Crimes Act, 2015, advocate Jebra Kambole filed an application No 32 of 2015 in the High Court to challenge sections 4,5,6,7,8,9,10,11, 14, 19,21,22,31,32,33,34,35,37,38 and 50 of the Act to be unconstitutional in that they infringe upon the Petitioner's right to seek, receive, and/or disseminate information guaranteed by articles 16, 17(1), 18,21(1) and (2) of the URT Constitution.<sup>20</sup>

The Court held that all other provisions were not unconstitutional except section 50 which the court “exercising the powers vested in the High Court by Articles 30(5) of the URT Constitution- and section 13(2)of the Basic Rights Duties and Enforcement Act, the same directed the Government through the Attorney General within the period of twelve (12 months) from the date of the order of the court to correct the complained anomalies in Section 50 of the Cybercrime Act failing which the provision should be scrapped off the statute books for infringing the fundamental right to be heard under Article 13(6) (a).

The provision of section 16 violates international freedom of expression standards. It makes the work of journalists covering an unfolding story or breaking news unreasonably dangerous as in such situation facts are often difficult to verify, moreover it is often debate as to what the truth of a particular matter is and state should trust citizens to reach their own conclusion .

Sections 31,33,34,35 and 37 give powers to Police to search users of online data in the absence of a court order. This is against the right to privacy as provided for under Article 16 of the Constitution of the URT .

Should the law remain the way it is now – without defining the elements forming this offence (under Section 16), CSOs would also fall victims of the same especially because they are engaged in researches, publications and, most of them are now moving towards e-advocacy engagements due to the expansion of technology in Tanzania.

#### **3.4.4 Recommendations**

- This law should be amended in order to eradicate ambiguities; severity of punishment; and, focus on ‘security’ and ‘protection’ instead of punishment.
- The Cybercrimes Act should respect international human rights standards/legal instruments to which Tanzania is a signatory to. Further, internet freedom is a human right and therefore the law should not restrict it unjustifiably.

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<sup>20</sup> Analysis by Article 19



## 3.5 ACCESS TO INFORMATION ACT OF 2016

### 3.5.1 About this Law

The *Access to Information Act of 2016* (AIA) came in September 2016 after its first attempt of 2015 failed to go through even after being tabled before the Parliament under the certificate of urgency. It was a concern by the media actors and public at large on the ‘urgency’ of the Bill for this law, while in logic sense, its essence was to interpret further Article 18 of the URT Constitution on right to information as well as enforcing the government agenda on open-governance<sup>21</sup> which was being implemented during the time. Legislation enabling public access to information was a flagship commitment of Tanzania’s Open Government Partnership (OGP) Action Plan for 2014-2016. Such a law could, in principle, go a long way towards bringing the government closer to the people – allowing the public, civil society, the media and others to better understand what the government is doing, and encouraging more and better public participation in decision making processes.<sup>22</sup> The law was enacted along with the Media Services Act of 2016 discussed below.

### 3.5.2 Gaps of the Access to Information Law

As it is stated elsewhere in this compendium, information is a working tool for CSOs and other sectors including the general public. The flow of information facilitates effective engagement of the CSOs and the general public in the governance of the country. This ought to have been the spirit of this law.

In the broad sense, this law has subjected itself to other laws by allowing exemptions of some of the information needed from certain sources. Therefore, almost the same challenge on access to information, which existed before this enactment, remains the same in practice. This is particularly a challenge because Tanzania retains a number of laws which limits access and use of information, including the Statistics Act of 2016 discussed in this chapter.

The Act (under section 5) provides right of access to information only to citizens of the United Republic of Tanzania. This excludes other residents, and appears to exclude requests made by legal entities such as corporations. In both cases, this runs contrary to global best practice.

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<sup>21</sup> Under the Tanzania’s Open Government Partnership (OGP) Action Plan for 2014-2016. It is not certain whether this Plan was reviewed afterwards. Analysis of the Access to Information Act, 2016 By, Twaweza; 2016

<sup>22</sup> Analysis of the Access to Information Act, 2016 By, Twaweza; 2016



Section 5 (2) provides one very broad exemption that could hamper implementation of the law significantly – namely by stating that information should only be provided “subject to the provisions of other written laws”. Given that several other laws – such as the Records and Archives Management Act (2002) and many others – place tight controls on the release of information, this is potentially a very wide-ranging exemption.

Under section 18, there is a provision that makes it an offence for recipients of information under the Act to “distort” the information provided. This replaces, and significantly improves upon, previous wording that made it an offence to share or publish the information received. The term “distort” is highly subjective, however and it would have been preferable for this clause to have been removed entirely. Alternatively, it could have specified that only deliberate and malicious distortions should be an offence, or included an exemption for acting in good faith.

According to the long-title, this law is intended to provide for (i) access to information; (ii) defining the scope of information which the public has the rights to access; and, (iii) promoting transparency and accountability of information holders. These broad objectives are clarified further under Section 4 of the law (AIA). The determination of the ‘scope’ and allowing the flow of information ‘subject to any other written laws’ or ‘other legislative requirements’ are intended to control unpleasant or sensitive information from being accessed publicly. However, this exception is broad and not adequately clarified under this law. Moreover, it mitigates the essence of this law – which ought to have been ‘improving’ access to information.

Section 6 (2) of AIA offers grounds for exemption to access information which include (i) impending due process of the law; (ii) endangering safety of life of any person; (iii) undermining lawful investigations being conducted by a law enforcement agent; and, (iii) not justified in public interest. The question of ‘safety’ has long been criticized for being used to undermine some of the democratic activities such as suppressing demonstrations or political rallies and some voices especially against the groups which hold an alternative view against the State.

There are serious problems with the mechanisms outlined for appeals against decisions refusals, delays, etc of the information holder. Most significantly, in the vast majority of possible cases, the final decision on appeals rests with the Minister with responsibility for legal affairs. This represents a clear conflict of interest, with a senior government figure given the final decision on whether information held by government should be released.

The Act does not establish any form of an Independent Information Commission (IIC). In many countries, such a commission is responsible for handing appeals, and for other important roles such as promotion and monitoring.

Moreover, access to or disclosure of information on investigation could actually facilitate investigation process especially because the investigators normally depend on CSOs and general public as witnesses or for expert opinion, etc. As for ‘public interest’, this too has been criticized for being vague. According to 2018 LHRC analysis<sup>23</sup> of different laws, in other countries, ‘public interest’ is not an exception for the grant of information. For instance, Section 12(2) of the Nigerian Freedom of Information Act of 2011 provides that ‘notwithstanding anything contained in this section, an application for information shall not be denied where the public interest in disclosing the information outweighs whatever injury that disclosure would cause.’ It is not certain how this works in Nigeria (same Commonwealth country like Tanzania), but at least their legal framework on the right to information is clear on ‘public interest.’

On the other hand, it is good that this law has now clarified ‘national security’ under Subsection 3 of Section 6. This should have been done for all other ambiguous exemptions, which gives law enforcers with wide discretionary powers to interpret the same. However, it would have been much better and useful if this clarification (on ‘national security’) was to be reflected in the National Security Act of 1967 by a way of amending its provisions. Currently, the 1966 law does not define it; instead, has incorporated a provision of protecting ‘classified information’ (under Section 5 of this security law).

Section 17 of the AIA provides for means of accessing information. It gives a range of avenues through which information could be accessed. The good practice or positive side of it is that, the law has been disability sensitive. For instance, Section 17(1) (e) stipulates that, ‘in case of a person with sensory disability, by provision of a record in a format that allows the persons to read or listen to the record of the information.’ This practice is highly recommended as it is in the line with the principles underlying the Persons with Disabilities Act of 2010 (PWDs law). Section 4 (e) of the disability law provides for a principle of ‘accessibility.’ Section 17 of the AIA fall below required standard of ‘accessibility’ in the context of disability rights. Section 3 of the PWD law defines ‘accessibility’ to, among others, mean:

*“...enabling or allowing a person with disability to have access directly or indirectly to benefits of public social services in all spheres of society and it includes access to information, communication and physical environment such as tactile and sign language, interpretation for deaf and deaf blind persons, audio tapes, braille, large print, low vision facilities, computerized information and programmes ...”*  
[emphasis supplied].

Section 38(1) and (2) of the disability law provides in details the right to access to information for PWDs. Section 38(3) of this law expands it little bit to cover persons with intellectual disabilities (PIDs) seeking information. The law requires those who give information to PIDs to ensure that such information ‘is in a clear language, legible and easily understood by such persons.’

<sup>23</sup> LHRC, Freedom of Expression and Freedom of Assembly in Tanzania: An Analysis of the Legal Framework, May 2018, Pages 30 – 33.

There are some strong provisions against damaging or destroying information to prevent disclosure (clause 22), and protections for whistle-blowers (clause 23) and for those acting in good faith (clause 24).

However, there is a major concern with penalties for wrongly releasing information being severe attracting imprisonment of three to five years' (clause 6) while there are no penalties for wrongly withholding information. As such, from the perspective of an information holder, the risk is all on one side: wrongly release information and a long prison sentence awaits, but wrongly withhold information and there are no consequences. The effect is that the incentive built into the bill is entirely against the release of information.

### **3.5.3 Challenges of the Access to Information Law**

This law was not yet being effectively implemented at the time of the publication of this compendium. However, basing on the gaps highlighted above, it is certainly that its implementation will adversely affect the work and presence of CSOs for the same reasons already explained under the cybercrime and other laws.

There is no remarkable added advantage of having a law of this nature which, instead of widening the accessibility of information, it tends to restrict the same.

The Act under section 7 requires that all information holders should appoint an information officer, and that where this has not been done, the head of the institutions becomes the default information officer. This is a key feature of good access to information legislation and is all included here.

The Act under sections 8 and 9 requires information holders to maintain and publish records of the information they hold. Aside from some looseness in the language used, these provisions are broadly useful.

However, there are very significant gaps in the provisions for monitoring and promotion – indeed there are no such provisions. There is no obligation on any specified body to promote the right to information or raise public awareness of the Act. There is no provision for training for information officers and there is no requirement either for information holders or any central body to monitoring implementation of the Act. In other countries, it is usual for information holders to be required to report annually on requests received, responded to, refused, etc., and for a central body to compile an annual report on the same. Without these provisions, it will be very difficult for anybody either within or outside government to know how well the Act is being implemented in practice, or to identify where it could be improved.

### **3.5.4 Recommendations – the Access to Information Act, 2016**

The specific recommendations are:-

- (i) The law should be amended to accommodate the specific requirements of the PWDs law especially Sections 3, 4 and 38.
- (ii) The law should be amended to eradicate the exemptions or make clear clarifications of the same the way it has done for the term 'national security.' Otherwise, it will give law enforcement agents a wide discretionary powers or confusion in implementing it.



- (iii) The law should be amended to have the appeals to be heard and judged by the courts.

## **3.6 MEDIA SERVICES ACT OF 2016**

### **3.6.1 About this Act**

The Media Services Act of 2016 (MSA), also Bill sparked a lot of public debate against it when it was first tabled before the Parliament in 2015 under certificate of urgency and later removed by the Government following a lot of opposition from information and media stakeholders. It was re-tabled and passed in 2016 and purports to make provisions for the promotion of professionalism in the media and establishes statutory bodies for the control of the profession including the Journalists Accreditation Board (JAB) and Independent Media Council (IMC). The first volume of the compendium analyzes the MSA in details.

### **3.6.2 Gaps and Critique of the Media Services Act**

One of the critiques of the MSA is that, it gives the government enormous and wide discretionary powers to control individual journalists and the media. The indicator for this was and is said to be a mandatory requirement imposed by this law for all journalists to obtain accreditation – from the board which is entirely appointed by the respective Minister..

The expectation of the media practitioners looks to have been a departure of the then Newspapers Act of 1976, which was highly criticized for being repressive and gave the Minister discretionary powers to suspend publication or deregister any newspaper. However, the new law (MSA) does not change this approach; instead, it introduces more control mechanisms under the pretext of enhancing ‘professionalism’ in the media fraternity.

The MSA has at least four critical issues posing threats to freedom of press and the work of journalism in general. Those are in respect to accreditation of journalists; creation of a statutory media council; criminalization of ambiguous offences such as ‘sedition’; and, the severity of penalties introduced by this law.

Section 11 of MSA establishes the JAB. The Board is controlled by the State in different ways. For instance, despite its independence, the AG can intervene proceedings by or against it and, it has to inform the same of the intended or pending proceeding. Secondly, according to Section 12, all JAB’s members are appointed by the Minister. This is calculated to undermine the freedom of press because media practice in Tanzanian is currently liberal and not exclusively State owned. Subjecting journalists under State control could mean compelling them to abide with the interest of the same.

Section 14 of MSA provides for the powers of the JAB, which include (i) suspending or expunging journalists from the roll of accredited journalists; (ii) impose fines for non-compliance may be prescribed in the regulations; and, (iii) set fees and charges for accreditation.

The other challenge on this law is the vagueness of some its provisions, which gives free room for the law enforcement agents to decide according to their own perceptions. Section 7 of MSA for instance, is full of vague or ambitious terminologies. This provision is on the rights and obligations of the media houses. For instance:-



(i) Section 19 (1) of the MSA requires all journalists to be accredited before allowed to practice journalism. This means that without an accreditation, a person cannot practice journalism. According to this Act, journalism means gathering, collecting, editing preparing or presenting news, stories, materials and information for a mass media.<sup>24</sup> Therefore this task is confined only to a few accredited groups of people contrary to the right of freedom to seek, receive and impart information which should be enjoyed by everyone without discrimination. Although the possible objective of this seems to improve the media services and ensure the credibility of the industry, there is a legitimate concern that most citizens lack basic education and multiple source of information in order to form an independent opinion. For that reason, an alternative, and less restrictive, means to increase the quality of media services would have been adopted, for instance sanctioning of offensive content etc.

(ii) Strangely, the Act also contains provisions which seem to vest the editorial powers to the Minister. These are section 58 and 59. According to section 58, the Minister has been empowered to prohibit importation of any publication which in his opinion is contrary to the public interest; the Act is silent on what amounts to a public interest. Worse still, the provisions of section 59 empower minister to prohibit or sanction the publication of any content which in his opinion jeopardizes the national security or public safety. Strictly speaking these are editorial powers given exclusively to the Minister to monitor the contents of the print media in the country. It is undoubtedly that section 59 may be used by the Minister to filter the contents of the print media. So it is safe at this juncture to say that, this provision seems to erode editorial independence and consequently restrict the press freedom and freedom of expression.

(iii) Section 7(2) (b) (iv) of this media law provides that private media house are supposed to 'broadcast or publish news or issues of national importance as the government may direct.' The 'national importance' is not defined in this or any other law existing at the moment. Secondly, there is no indication if the government will cover the costs of printing such 'national important news or issues' or at least offer some tax relief. Thirdly, stating that as the 'government may direct' could mean compelling the media houses to publish whatever the government proposes even if it is against the media house's internal policy. Some of the media houses (such as Uhuru and Tanzania Daima newspapers) are affiliated to certain political parties or their leaders with varied political ideologies – not necessarily matching with the government position at a particular period of time (for media houses affiliated to opposition political parties or leaders).

(iv) Section 7(3) of MSA which sets some limitations or criteria for the media houses to avoid publishing some information. That, the media houses are restricted from publishing information if such information is, among other things (a) undermines 'national security' of Tanzania or lawful investigation; (b) impedes due process of the law or endangers the safety of life of a person; and, (c) does not constitute hate speech. The term 'national security' is not defined in the (MSA) law or even the National Security Act of 1966. It is repeatedly mentioned under Section 26 (2) and 59 of the MSA. The 'safety of life' has already been argued earlier under the analysis of AIA. The 'hate speech' is not defined under MSA; rather, it is provided for under Section 55(1) of the Penal Code, Cap. 16 as a component of seditious crime. A number of newspapers have been closed down on account of 'seditious publications.' Some were cleared out through judicial process to imply that, there is a challenge of interpreting this offence in practice. Other vague words and phrases include 'public morals' (Section 26(2) of MSA); 'public safety' (Sections 59 and 50(1)(a)(i) of MSA); and, 'interests of defence', 'public

<sup>24</sup> See the definition of the journalist under section 3 of the MSA, 2016

order', and 'public morality' (also under Section 50(1)(a)(i) of MSA).

(v) Section 59 of the Media Services Act, 2016 has been particularly used to ban four newspapers including Tanzania Daima, Mawio, MwanaHalisi and Raia Mwema for different period. This and many other provisions have been challenged before local (Court of Appeal at Mwanza) and regional courts (East African Court of Justice) for violating the right to freedom of expression as provided for in the URT Constitution and Treaty establishing the East African Community (EAC). The two cases are still pending in court. It is further interesting to note that, Mawio newspaper which was banned for 24 months won the case against the government but the latter has blatantly refused to honour the judgment and give it the needed permit to start publishing again.

(vi) The fourth issue of concern or gap in MSA is on licensing which is provided under Section 8. The registration authority is the Director of Information, who is appointed by the President. The Director is also deemed to be the spokesperson of the government – apparently defending the State's interests, which could not necessarily supported by everyone including a media house or owners of the same. Therefore, there is a thin line of independence in decision making of this official. A more prudent idea was to designate independent agency to license registration of media houses as it is for business companies (BRELA). There is also the issue of double registration. In order to start a newspaper one needs to have a company. This is done through BRELA by obtaining a business. MSA has introduced a new element of requiring newspapers to register and get an annual license from Habari MAELEZO. This is also regarded as a control mechanism since newspapers critical to the government could hardly have their licenses renewed.

(vii) It is the same line of argument and reasoning for the composition of the JAB (Section 12(1) of MSA), which its members are appointed by the Minister on his or her very discretion.

### 3.6.3 Challenges of Applicability of the Media Services Act

Reading and interpreting the powers plus the functions of JAB as stipulated under Section 13 of the same law, it is clear that the intension of this law is to 'control' and not to 'nurture' or to 'supporting' the flourishing of journalism in Tanzania. The Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression of 2003, it was stated that, 'individual journalists should not be required to be licensed or to register and that, there should be no legal restrictions on who may practice journalism ...' The declaration affirmed that, it is problematical to impose substantive conditions on the media or overseeing the same by the bodies which are not independent.

With the introduction of this approach, the long existed Media Council of Tanzania (MCT) would lose its mandate as a media-self regulatory mechanism or organ. The council itself is now subjected to legal requirements under this or other laws already discussed.

The Act would establish heavy restrictions on media operations, including a requirement that private media should broadcast or publish news as directed by the government and limits on the editorial independence of public media. These restrictions should be removed, and the Act should clearly state that the editorial independence of both public and private media must be respected.

The Act gives an unduly broad definition of defamation that is not in line with international law. In particular, the Act should be revised to allow that any statement which is true or which is an opinion cannot be considered defamatory.

The Act establishes a broad, unclear and vague set of offences, including sedition clauses that go well beyond what is considered normal in a democratic context.

### **3.6.4 Recommendations –the Media Services Act, 2016**

In the view of those and other concerns, it is recommended that:-

(i) Media as civil society sub-sector should be allowed to operate independently or with minimum control and guidance. The best approach, as it is taken by other countries in the world, is to allow media and CSOs to have self-control mechanisms.

(ii) This (MSA) law should be amended to clarify the ambiguous words and phrases as indicated above. In this way, there will be certainty of law enforcement for the interests of both media practitioners and the State.

(iii) The law should be amended to reconsider types of offences it has created and the severity of the punishment. The modern democratic governance approach is to seek partnership and consensus and not using a law as a whip against the alternative voices. Finally, there is a need to designate accreditation of journalists and registration of media to independent bodies which are free from State influence.

(iv) Under the Constitution of the United Republic of Tanzania, the right to freedom of expression is provided under Article 18. The Constitution gives everyone the right to seek, receive and impart information regardless of the national frontiers. However most of the provisions of the MSA seems to derogate from this right. By subjecting media to unnecessary censorship, licensing and accreditation requirements, the right to freedom of expression is jeopardized. Under MSA ordinary citizens may not gather and collect information for the purpose of disseminating them to the public unless they are accredited journalists. The law should thus be amended to remove the requirement of accreditation of journalists since this in a way also affect other individuals like bloggers and civilians from publishing and/or seeking information.

(v) It is clear that the Journalists Accreditation Board which has enormous powers in regulating the journalism profession in Tanzania does not meet the standards prescribed under the above article. All seven members of the board are appointees of the Minister as per section 12(1) of the MSA. Again, these members are accountable only to the minister who has appointed them contrary to what is required under the principles of the Declaration. Due to these reasons the independence of the board may be called into question. Good practice on this aspect would be to recruit members based on a competitive recruitment process. Direct appointments is likely to affect the independence of the appointees unlike when they have been recruited basing on their competence.

## **3.7 ONLINE CONTENT REGULATIONS OF 2017**

### **3.7.1 About the Regulations**

The Electronic and Postal Communications (Online Content) Regulations of 2017 are made under Section 103(1) of the Electronic and Postal Communications Act, Cap. 306 of the laws of Tanzania. Therefore, they are enforceable by the TCRA.



Clause 2 of the 2017 regulations makes provisions for which these regulations are applicable for. According to this Clause, the regulations are applicable for (a) application services licensees; (b) bloggers; (c) internet cafes; (d) online content hosts; (e) online forums; (f) online radio or television; (g) social media; (h) subscribers and users of online content; and (i) any other related online content. It is obvious that CSOs' activities are subject to these regulations because majority of them are now engaging with or through alternative media outlets.

### 3.7.2 Gaps of the Online Content Regulations

The regulations are criticized by many CSOs and internet users for being restrictive of freedom of information, which is guaranteed under the URT Constitution.

There are several provisions which either restrict the said freedom or have left ambiguous – and therefore, gives TCRA discretionary powers against the internet users. For instance, some of the prohibited (online) contents under Clause 12 of these regulations are 'content that portrays violence, whether physical, verbal or psychological, that can upset, alarm and offend viewers and cause undue fear among the audience or encourage imitation' (Clause 10(1)(f)); 'portrays sadistic practices and torture, explicit and excessive imageries of injury and aggression, and of blood or scenes of executions or of people clearly being killed' (Clause 10(1)(g)); and, the 'content that causes annoyance, threatens harm or evil, encourages or incites crime, or leads to public disorder' (Clause 10(1)(h)).

### 3.7.3 Challenges of the applicability of the Online Content Regulations

Some<sup>25</sup> analysts are of the views that the prohibiting such overly broad and ambiguous categories of content (Clause 12) is an unlawful restriction on the freedom of expression. Specifically, the first prong of the Article 19 of the International Covenant on Civil and Political Rights of 1966 (ICCPR), which requires restrictions to the freedom of expression to be both predictable and transparent. According to the International Centre for Non-for-Profit (ICNL) analysis, to meet the requirement of predictability, the law in question must be formulated with sufficient precision to enable both the individual and those charged with its execution to conform their conduct to the law. Individuals and authorities must know precisely what speech is permitted and what is prohibited. Therefore, Clause 12 of the 2017 regulations fails this test.

Furthermore, ICNL analyses shows that, applicability of such kinds of provisions could prohibit broadcasting of news regarding violent crimes or campaigns highlighting the dangers of domestic violence or sexual trafficking; and that, prohibited images or content may also expose abuses at the hands of police or other authorities, such as unnecessary violence against protesters or marginalized groups, which is information that clearly is the public's right to know.



Another effect of the regulations is the requirement that anyone who operates a blog or forum in Tanzania should moderate all user-submitted content before it is publicly visible. This would require bloggers, for example, to review every comment posted on their blog and to check that it meets the requirements of the regulations before that comment is published. For any blog or forum that currently receives large amounts of user-generated content, this requirement would either introduce massive additional staffing requirements and costs and/or massively reduce the amount of content that gets published. In either case, operating a platform with an active community of users would become financially impossible for anyone other than the very wealthy.

The requirement for pre-moderation would be to deny users their right to freedom of expression, by requiring that any opinion they express must be approved by site operators.

Moreover, there is also concern about registration of the social media owners as such process attracts a lot of fees, which could be unaffordable by some of the bloggers. Lastly, the concern is also on the severity of punishment. Accordingly to Clause 16 of these regulations, ‘any person, who contravenes the provisions of these Regulations, commits an offence and shall, upon conviction be liable to a fine not less than five million Tanzanian Shillings (approximately USD 2190) or to imprisonment for a term not less than twelve (12) months or to both.’ The discussion on judicial freedom to impose punishment basing on the merit of each case is valid here as well.

The definitions and other terms of the Regulations create uncertainty around social media. In particular, some forms of social media – including Facebook, Twitter and Instagram – would meet the definition of a forum as a “site where people can hold conversations in the form of posted messages or journals and whereby most forums allow anonymous visitors to view forum postings, but require creation of an account in order to post messages in the forum.” As such, the regulations would appear to require Facebook and the other social media companies to fulfill the requirements for blogs and forums, including registration with TCRA, pre-moderation of all content posted by users, identification of all users, etc.

These large social media companies are not based in Tanzania but have significant numbers of users in Tanzania. But it is unlikely that the companies would be willing to register with TCRA, and inconceivable that they would introduce pre-moderation and prohibit anonymity for their Tanzanian users. It is more likely that they would choose to make their services unavailable to users in Tanzania, thus depriving Tanzanian citizens of the opportunity to engage fully and freely in communications with the wider world, and of all the benefits that this can bring.

<sup>25</sup> Especially: ICNL ‘Analysis of the Tanzania Online Content Regulation, September 2017.’ Note, ICNL is the International Centre for Non-for-Profit Law, based in Washington DC, USA.

Prohibitions have gone beyond appropriate limits on freedom of expression – for example, the prohibition on satirical or fictional content that is not relabeled as such. Similarly, the prohibition on “disparaging words” is a clear restriction on freedom of opinion. It is even possible that true statements of fact could be made a criminal offence under this prohibition, where the fact itself is considered disparaging. Imagine, for example, referring to someone as “corrupt” where they are indeed corrupt: this would be both true and disparaging, and under these regulations it would be illegal. Under international law and best practice, a statement that is clearly an expression of an opinion, or one that is true, should be permitted.

MCT, LHRC and THRDC filed a case in the High Court of Tanzania at Mtwara to challenge the Online Content Regulations but unfortunately the case was ruled in favour of the respondents. The court on another hand ruled out that the word content as defined in the Online Content Regulations be quashed for the Minister went beyond the powers she had by giving out different definition of the word content from the one in the parent Act. Luckily, applicants have already lodged necessary documents for an appeal to the Court of Appeal of Tanzania.

#### **3.7.4 Recommendations - the Online Content Regulations**

These regulations, as it is the case for the Cybercrimes Act, limit freedom of expression and information especially in this era where ICT is increasingly becoming a cost effective and efficient or effective way for CSOs work. Therefore, they should be amended especially Clauses 7, 12 and 16 on registration, types of online content offences and punishments as discussed above.

### **3.8 OTHER PRACTICAL CHALLENGES IN PUBLICIZING AND DISSEMINATING INFORMATION**

The Statistics Act places restrictions on communication media such as radio stations, television stations, newspapers, magazines, websites and any other media to communicate or publish official statistics without authorization from the NBS. The penalties stipulated in the Act are high with fines ranging from about USD 500 to USD 5000 and/or imprisonment for six months, one year or three years – all as minimum penalties for different violations under the Act.

These provisions limit access to government statistics (information) and can prevent access to critical information. They are also restrictive for non-governmental researchers to research on and publish their data. As said earlier on, the generality of this law could limit academic freedom – to challenge data released by the government e.g on economic, road accidents, civic commission resulting to deaths, etc.

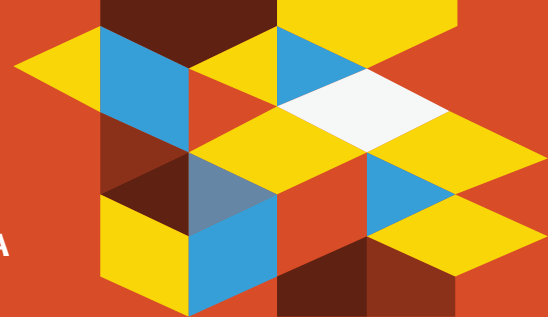
As for restrictive access to public information, the Media Institute of Southern Africa (MISA) Tanzania's 2017 study on Access to Information in Local Government Authorities and Central Government represented by Regional Commissioners' Offices in Tanzania shows that, accessing information from some of these public offices in the regions is a challenge despite the presence of the Access to Information Act and constitutional provisions which guarantee right to information. For instance, only 2 out of 7 regional administrations sampled for this study responded to a request for information and at least within 30 days. Moreover, none of the 7 regional administrations sampled provided written reasons for refusal of information.

On the other hand, the dissemination of information by CSOs has generally been allowed. However, the 'sensitive' ones such as the one issued by TWAWEZA, SIKIKA and LHRC could not go out for public consumptions without troubles problems. The illustrations on this have already been given elsewhere in this compendium.

There is a high possibility that, if the Statistics Act will be left as it is, especially Section 37, CSOs and other stakeholders will fail to disseminate their information. Note that, according to Section 37(1)(b) any person who without lawful authority publishes or communicates to any person otherwise than in the ordinary course of his employment any information acquired by him in the course of such employment commits an offence.

# CHAPTER FOUR

## ADVERSE IMPLICATIONS OF PENAL LAWS TO CSOs IN TANZANIA



### 4.1 INTRODUCTION

As it is indicated in volume one of similar compendium, like other entities, CSOs are not exempted from criminal liabilities once they commit crimes. The laws and regulations governing CSOs have established a number of criminal offences against these entities as it have been explained in previous chapters.

Yet still, criminality to institutions and individuals can occur in violation of other penal laws including the Penal Code, Cap. 16; the Prevention and Combating of Corruption Act of 2007; the Anti-Money Laundering Act of 2007; the Anti-Trafficking in Persons Act of 2008; the Prevention of Terrorism Act of 2002; the National Defence Act of 1966; the Immigration Act, Cap. 54; the Citizenship Act of 1995; and, the Economic and Organized Crimes Control Act of 1984. This chapter discusses by way of illustrations a few of these laws.

### 4.2 VULNERABILITY OF CSOs TO CRIMINALITY

The CSOs are, currently, facing a new wave of operational challenge, which is criminalization of their operations as juristic persons or their personnel under various laws. This is a case because, at the moment, the presence and work of CSOs in Tanzania is full of regulations, directives and restrictions.

The legal frameworks 'command' and 'prohibit'; but, certainly, not facilitating the CSOs interventions, even for activities which are purely service provision such as legal aid. For instance, unlike the Tanzanian Legal Aid Act of 2017; a similar law for Kenya of 2016 establishes a fund to support legal aid service providers who have offered assistance to the indigent clients.

Yet more, of recent, administrative directives have been issued from the ministries and some of the local government leaders, all of which 'direct' and 'command' instead of facilitating. Examples have been given already including the recent letters and circulars quoted in previous chapters.



All these expose CSOs into more vulnerable situations in addition to huge challenges they are facing to run their organizations. There is a possibility that CSOs will continue to be submissive and inferior partners to the State instead of being supporters and alternative voices of the same. A quick survey conducted between September and October 2018 as part of preparation of this compendium found that, currently, most of the CSOs ‘prefer’ soft advocacy approach as in that way, ‘the government could listen to us’, as one of the directors said. Further discussions with them came out with the conclusion that, they are, in fact ‘compelled by the circumstance’ to become soft and submissive in order to win the State’s affection and sympathy to them. A number of criminal laws have been inappropriately enforced against CSOs or their serving officials as it is discussed below.

### 4.3 APPLICATION OF IMMIGRATION ACT, CAP. 54

There a number of INGOs and local NGOs with foreigners working in Tanzania. Their stay and work is regulated by, among other laws, the Immigration Act, Cap. 54 of the laws of Tanzania. The law lays down terms and conditions for different permits including tour, study and working. The chief implementer of the law is the Immigration Department. The essence of the law is clear; which is, to control illegal immigrants which are generally threat to the country national security. It is also for safeguarding employment and resources for the benefits of the country.

Of recent though, the immigration department has been used to deal with individuals, especially HRDs when expressing alternative views or critiquing government decisions or policies. Just within a year, at least four HRDs were interrogated over their ‘citizenship.’ For instance, in December 2017, the Roman Catholic Bishop for Rulenge Parish, Ngara district, Kagera region, Bishop Severine Niwemugizi, was summoned by the immigration department in the region over his citizenship. This move came almost immediately after he made a remark on a need to have a new constitution during the THRDC’s meeting in that year. This and other incidents were and have been widely reported by local and international media.



Photo: Media clips on the interrogation of the Bishop and silencing of alternative views.

In June 2018, Mr. Onesmo Olengurumwa, the National Coordinator of the THRDC was interrogated by the Immigration Department over his citizenship. Mr. Olengurumwa is known for his activism as leader of HRDs' network in the country. There was assumption that, his contact with immigration officials was attributed to his organization's press statements, researches and recommendations.

In August 2018, Mr. Aidan Eyakuze's travelling documents (passport) were confiscated by the same department. This was part of the reaction against TWAVEZA's findings on the decreased popularity rate of the current president of Tanzania. Mr. Eyakuze is the Executive Director of TWAVEZA.

On 6th November 2018, the two officials from the Committee to Protect Journalists (CPJ) were arrested and allegedly had their passports confiscated by the Immigration Department as itself confirmed two days later. The officials are Ms. Angela Quintal, Africa Program Coordinator at the CJP and a South African national; and, Ms. Muthoki Mumo, CPJ's sub-Saharan Africa Representative a Kenyan National. The duo were released a day after but, their passports remained in the custody of the Immigration Department. The department claimed that, the two journalists did not have required permit to consult local journalists in the country.

#### **4.4 APPLICATION OF OTHER PENAL LAWS**

The specific law on most of criminal offences is the Penal Code, Cap. 16. This is the main law providing for criminal offences and penalties (punishments) in Tanzania. It is the main reference book for the work of police officers, who are generally governed by the Police Force and Auxiliary Services Act, Cap. 322. The two laws give the police enormous powers of arrest, search, interrogation, etc of any suspect.

The Police have also discretionary powers to decide on demonstrations or public meetings by any group including CSOs. For instance, Section 43 of the Police Force and Auxiliary Services Act, Cap. 322 provides for the requirement to submit a written notification of impending assembly or procession, to the police officer in charge of the area. The 'notification' has, in practice, been considered or granted by the police as 'permission' as they have been assuming powers to 'permit' or 'reject' assemblies or processions to take place.

There are isolated incidents of police's denial of 'permission' against CSOs' intended procession or assembly. The open victims of this Police's power have been political parties. The president proclaimed against opposition political rallies until during election periods. This was, and still, criticized by the opposition political parties and other stakeholders on the ground that, it infringes the constitutional right of the freedom of assembly.

One of the isolated incidents to illustrate adverse application of the penal laws by the Police Officers is of Mr. John Baraka, Coordinator of the Tanzania Students Networking Program (TSNP). Mr. Baraka is known for advocating and supporting the role of HRDs in public life and civil society at large. The young professional organized a meeting at Blue Pearl Hotel in Dar es Salaam, Tanzania on 3rd June, 2017. The intension of the meeting was to launch a book titled the Sauti ya Watetezi wa Haki Vyuoni (The Voice of Human Rights Defenders in Universities), which is authored by his colleague, Mr. Alphonse Lusako, General Secretary of TSNP. The said book illustrates the harassment tactics used to remove HRDs from positions in higher education institutions in Tanzania. The Police Officers interfered the event and arrested Mr. Baraka and Mr. Onesmo Olungurumwa who was in the meeting room.

Other incidents happened in recent years on application of the penal laws include the suspension and deregistration of some of the NGOs which were allegedly advocating homosexuality rights by, among other ways, distributing lubricants for homosexuals in 2017. The then Deputy Minister for Health, Community Development, Gender, Elderly and Children declared no entry in the country for homosexuals. In November 2018, Honorable Paul Makonda - the Dar es Salaam Regional Commissioner launched a campaign to expose homosexuals rising in the city. Some names were mentioned on media. One of the suspects of homosexuality was arraigned and his case is pending.

The Penal Code of Tanzania criminalizes 'carnal knowledge of any person against the order of the nature. Homosexuality is also regarded as immoral by the majority of Tanzanians. The critical change, without regard to its illegality in Tanzanian legal framework, is how the matter is handled and the rights of the suspect. A move by the Dar es Salaam Regional Commissioner sparked huge alarm worldwide. The Standard newspaper reported that, the World Bank cancelled (or suspended) its mission in Tanzania because it is 'unsafe' for homosexuals.

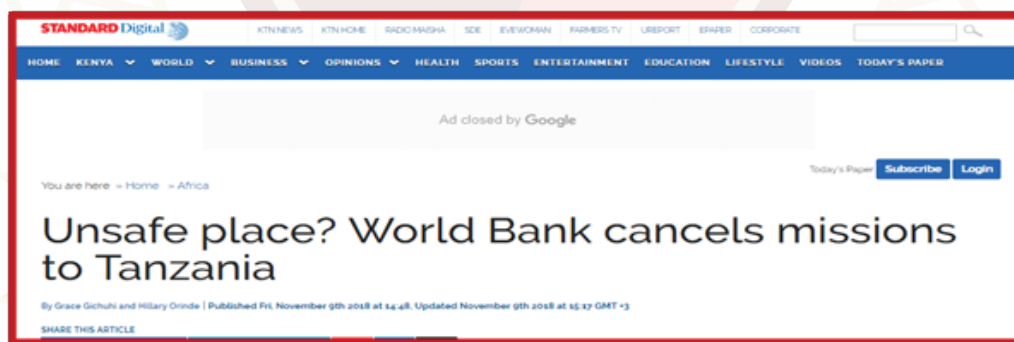


Photo: A website page on alleged World Bank's decision

There was a need to guide CSOs working on or for key population to consider the best ways of engaging with their targets instead of applying penal sanctions which do not necessarily yield positive results.

# CHAPTER FIVE

## CHALLENGES IN OTHER LAWS RELATED TO GOVERNANCE AND OPERATION OF CSOs IN TANZANIA



### 5.1 INTRODUCTION

Volume one of the compendium mentioned a number of other laws which govern some aspects of CSOs operations in Tanzania. Such other laws include on property ownership, taxation, employment and labour related legislation and social security and immigration services. Areas of concern amongst these laws include those of taxation and immigration. The practical issues pertaining immigration are already covered in previous chapters. Therefore, this chapter predominantly focuses on taxation practices. It discusses taxation in connection to fundraising and other operational activities of CSOs. It should be noted that, most of the CSOs are donor dependents and a few of them are engaging in alternative resource mobilization strategies including establishment and management of micro-finance business such as saving and credit groups in the forms of Village Community Bank (VICOBA) and Saving and Credit Co-operative Society (SACCOS).

### 5.2 CSOs' TAX AND OTHER FINANCIAL OBLIGATIONS

#### 5.2.1 Taxes Payable by CSOs

As it was indicated in volume one of the compendium, many of the CSOs are registered and operate as non-profit sharing organization. Therefore, whatever profit or financial gain is secured, it is supposed to be spent for the benefits of organization – furtherance the objectives of the CSO. That is a case because CSOs are regarded as 'charitable' organizations even if they are not directly engaged in service provision.

Despite the fact that most of the CSOs are charitable organizations, the current legal framework on taxation does not exonerate them from paying taxes. Most of CSOs' interventions such as consultancies, payment of salaries and allowances, purchase of properties, investments in Income Generating Activities (IGAs) are subject to tax obligations.

The tax laws administered by the TRA for CSOs and other charitable organizations including the FBOs:-

Tax Administration Act of 2015 (for all taxes).

Income Tax Act of 2004 (for corporation, withholding (WT) and Pay As You Earn ).

Value Added Taxes Act of 2014 (for valued added tax (VAT)).

Vocational Education and Training Act of 1994 (for skills and development levies).

Stamp Duty Act (for stamp duty to authenticate transactions).

East African Community Customs Management Act of 2004 (for import duty).



## 5.2.2 Other Financial Obligations for CSOs

There are other levies and fees collected paid by CSOs to other State's authorities including development levies for CSOs with some interventions in IGAs; safety and occupational fees (charged under the Occupational Health and Safety Act of 2003); etc.

The CSOs are also required to remit statutory deductions to the social security funds especially the National Social Security Fund (NSSF); and, the Workers' Compensation Fund (WCF). The WCF is established under Section 5 of the Workers' Compensation Act, Cap. 263 (revised in 2015). The CSOs as employers, are obliged to comply with this law under Section 2(2) (a), by remitting 1% of the total funds it has on monthly basis.

## 5.3 BURDENS OF TAXES

The laws mentioned above require everyone and institutions including CSOs to pay taxes and remit returns to TRA periodically (monthly, biannual and annual basis). There are several statements or returns which CSOs as tax payers have to remit, including:-

An estimated income and tax payable or the final income and tax payable for each year of income. A company is required to submit tax returns even if it has no taxable income.

The Skills and Development Levy (SDL) returns. Monthly returns are submitted to TRA office before the 7th day of the month following the month of payroll.

The half year certificates for SDL, PAYE and WTT that tally with the monthly returns are submitted to TRA during the period.

## 5.4 TAX EXEMPTIONS TO CHARITABLE ORGANIZATIONS

The legal framework on taxation allows exemptions to charitable organizations. The 'charitable organizations' are defined under Section 64 (8) of the Income Tax Act of 2004 to mean 'resident entity of a public character that satisfies the following conditions:-

The entity was established and functions solely as an organization for:-

- i) The relief of poverty or distress of the public;
- ii) The advancement of education; or
- iii) The provision of general public health, education, water or road construction or maintenance; and

The entity has been issued with a ruling by the Commissioner General under Section 11 of the Tax Administration Act of 2015 that it is a charitable organization.

It is the concern by most of the CSOs in Tanzania, especially advocacy organizations, that, the definition of charitable organization is very narrow. It is not tallied with the one under the NGOs Act of 2002, which considers NGOs or CSOs as purely volunteering organizations and their staff. In most cases the office of the Commissioner General of TRA has been reluctant to grant charitable status to organizations which are working on advocacy. This is based on the grounds that such organizations do not fit under the definition of a charitable organization as per the Income Tax Act. self-compliance of the law as well as improvement of institutional performance. Due to this narrow definition of 'charitable organizations', CSOs have been subjected to a number of taxes including import duties when they import items for charitable purposes. Applying for exemptions under the Income Tax Act of 2004 has never been an easy task. This is tricky and issue of concern especially because: (i) funding partners do not necessarily reflect taxation components in their grants; and, (ii) even gifts and donations (grants) for CSOs are taxable as income.

## 5.5 RECOMMENDATIONS

Apart from widening the definition of charitable organization by aligning it with that of NGOs Act of 2002, it should also be clear to the tax authorities that, any amount of money received by a CSO as project fund is not expected to generate profit. Therefore, any legislation or provision or practice which charges CSOs taxes on basis of generating profit should be amended.

Finally, there is a need to have specific provision on tax exemptions for all CSOs doing charitable works as it is a case for religious institutions. The exemptions should not be automatic upon registration as CSO; rather, a simplified procedure for applying for it should be devised in current framework on taxation.

# CHAPTER SIX

## CHALLENGES ASSOCIATED WITH LEGAL AND REGULATORY FRAMEWORK GOVERNING OTHER CSOs



### 6.1 INTRODUCTION

There are other CSOs or institutions performing responsibilities similar to what ordinary CSOs are doing. These ones include the bar associations and legal aid service providers (LAPs). The bar associations in this context are the Tanganyika Law Society (TLS); and, the Zanzibar Law Society (ZLS). The LAPs include paralegal units or CBOs and other NGOs. This chapter focuses on the legal framework governing these types of CSOs. It is an addendum explanation of the previous discussions on the same subject matter. The TLS is established by an Act of Parliament termed as the Tanganyika Law Society Act, Cap. 307 of the laws of Tanzania (Mainland); while, the LAPs are registered and regulated under the Legal Aid Act of 2017. Both laws have regulations and rules clarifying some provisions. The ZLS is registered as a CSO. A discussion about it is covered under a separate compendium on Zanzibar. The discussion in this chapter touches base on practical issues pertaining the operation of the TLS and LAPs under their laws.

### 6.2 SOME GAPS WITHIN TLS AND LAPs LAWS

#### 6.2.1 Tanganyika Law Society Act, Cap. 307

The law that establishes TLS under Section 3 as a sole bar association in Tanzania. The TLS is one of the oldest professional institutions in Tanzania Mainland, established in 1954. Unlike other CSOs, TLS has its law to regulate it. Moreover, unique as it is, its objective and mandates are not only statutory, but also very broad. According to Section 4, the TLS' objectives are:-

- a) To maintain and improve the standards of conduct and learning of the legal profession in Tanzania.
- b) To facilitate the acquisition of legal knowledge by members of the legal profession and others.
- c) To assist the Government and the Courts in all matters affecting legislation, and the administration and practice of the law in Tanzania.
- d) To represent, protect and assist members of the legal profession in Tanzania as regards conditions of practice and otherwise.

- e) To protect and assist the public in Tanzania in all matters touching, ancillary or incidental to the law.
- f) To acquire, hold, develop or dispose of properties of all kinds, whether movable or immovable, and to derive capital or income from them, for all or any of the foregoing objects.
- g) To raise or borrow money for all or any of the foregoing objects in any manner and upon any security which may from time to time be determined by the Society.
- h) To invest and deal with moneys of the Society not immediately required in any manner which may from time to time be determined by the Society.
- i) To do all other things which are incidental or conducive to the attainment of the foregoing objects or any of them.

The Governing Council of the TLS, Secretariat and designated committees have been doing their best to implement the objectives of TLS. The bar association has made tremendous changes in its organizational developments in recent years, including adoption of the Strategic Plan (SP), other operational documents and creation of TLS Chapters (branches) as its extended arms at regional levels. Some of the Chapters like Mbeya, have also been implementing some projects on access to justice.

The changes made have improved realization of the above objectives; but, still challenges outweigh the successes. Some of the challenges are politically motivated. For instance, TLS has been under open threats from the government to be deregistered due to its pro-activeness in addressing some legal concerns happening in the country – which is one of its objectives. Its mandates (as depicted in Section 4 of the law) are also under critical scrutiny due to increased political pressure. This started to be more pronounced when the society members elected the Chief Whip of the main opposition in the Parliament of URT Honorable Tundu Lissu (Member of Parliament) as the President of TLS. He was succeeded by another outspoken and influential human rights activist Advocate Fatma Karume. The current TLS' President is also very outspoken and critical of the government.

However, there has not been any evidence to suggest whether such open threats or current leadership styles have direct implication to the realization of the specific objectives of TLS. Only what could be an issue of concern is absence of TLS' pro-activeness of issues falling in its mandates even the obvious ones like a need for new constitution and reforms of several laws such as on statistics, cybercrimes and information. Other bar associations within East African and Southern African Development Community (SADC) blocks are relatively pro-active even under their country's political situations which are likely to be repressive in nature than the Tanzanian one. The Kenyan and Zimbabwean societies could be singled out as best practices.



The central governing organ is the Council established under Section 15 of the TLS law. The council is comprised of the President, a Vice-President, a Treasurer and seven other elected persons. It performs the functions similar to the Board of Directors in other organizations. Its composition has never been a challenge though there is a need to specifically indicate representation of gender balance, disability and young advocates in it – in order to ensure more diversity.

Apparently, basing on the current trend - political pressure towards the governance of this Society, the government tabled before the Parliament some amendments of Section 15 of the TLS law. Through the Written Laws (Miscellaneous Amendments) Act No. 2 of 2018, a new provision, Section 15A(1) was added. The provision reads 'a member of Council shall observe political neutrality and shall not engage in political activities while serving as a member of the Council.'

Sub-section 2 of the same provision, Section 15A, clarifies meaning of 'political activities' in relation to a member of the Council to include:-

- a) Contesting for a political post within a political party as defined by the Political Parties Act or in any other partisan elections.
- b) Campaigning for or against a candidate in partisan elections.
- c) Making campaign speeches.
- d) Collecting contributions or raising funds for any political party.
- e) Organizing or managing political rallies or meetings.
- f) Holding office in political parties.

The AG may petition to the Advocates Committee for the removal of the council member from the Roll of Advocates if he or she contravene this provision according to Section 15A(3) of the 2018 Miscellaneous Amendments law. The AG presence is also brought in the society's affairs through a newly inserted Section 31 of the TLS law which states, among other things that, the TLS' Council have to consult AG when it wants to make regulations for the better carrying out the objectives of the TLS law.

These amendments directly interfere with the freedom of TLS. Prohibition of leadership on account of political activities can be interpreted to be in violation of constitutional rights especially because TLS is a civilian and an independent association.

As a way of silencing TLS from being vocal on its mandate, the top government and judicial leadership termed it as 'public property', while the law establishing it gives it independence including legal personality. Making TLS independent could render its functions more objective to make expert opinions for or against the government, judiciary or everyone. The Written Laws (Miscellaneous Amendments) Act of 2018 (No. 2/ 2018) should be rejected to safeguard the interest of the legal fraternity and its development. Instead, TLS should be empowered and supported to:-

- a) Institutionalizing its regional chapters.
- b) Facilitate improvement of access to justice by ensuring that, its regional chapters are effectively performing their responsibilities.
- c) Supporting LAPs especially paralegals through the regional chapters.
- d) Guiding young lawyers to organize themselves in professional firms and undertake their responsibilities professionally.
- e) Ensuring that prisoners and other inmates are accorded due legal support.
- f) Creating a formal platform with LAPs in order to improve access to justice.
- g) Engage in evidence-based or data-driven advocacy interventions to pursue reforms of the laws such as those of statistics, cybercrime and information. For instance, through strategic litigations.
- h) Improving defence (protection) of the TLS' members and (other) HRDs who are currently facing open threats and mistreatments. A need to come out with stronger protection mechanism.
- i) Becoming more pro-active in all matters pertaining legal development including a need for new constitution of the country.
- j) Seeking legal amendment to ensure that the Council of Legal Education (CLE) is linked with the Legal Aid Act of 2017 for purposes of improving legal aid service provision and promoting the roles and presence of TLS. Note that, the Kenyan Legal Aid Act of 2016 has given its bar association this noble role.

### 6.2.2 Legal Aid Act of 2017

The Legal Aid Act of 2017 coordinates and regulates provision of Legal Aid Services (LAS) as well as recognizes Paralegals in Tanzania Mainland. The law establishes two organs to administer LAS, namely; the National Legal Aid Advisory Board (NLAAB) under Section 4; and, the Registrar of LAPs (RLAPs) under Section 6 of the law. The main function of the RLAPs is to register LAPs; while that of the NLAAB include, to provide guidelines for LAPs and entertaining appeals from LAPs.

Those are relatively common functions and do not offer the two bodies sufficient powers to decide on the strategic direction and improvement of LAS in Tanzania. They are more on regulating and instructing instead of supporting and facilitating LAPs and LAS. The Kenyan Legal Aid Act of 2016 could be cited as the best practice. The law has similar organs (e.g the Board under Section 9 and the Director under Section 24) plus two more namely, (i) the National Legal Aid Service

(NLAS) established under Section 5 of the Kenyan law – as a body corporate; and, (ii) the Legal Aid Fund under Section 29 of the same law. Moreover, the mandates of the Kenyan Board are broader and strategic to include ‘enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which the Service is established’ (Section 11(d)). That is to mobilize resources for financing the NLAS. The functions of NLAS are broad. According to Section 7(1) of the Kenyan legal aid law, the functions of NLAS include to:-

- a) Establish and administer a national legal aid scheme that is affordable, accessible, sustainable, credible and accountable.
- b) Encourage and facilitate the settlement of disputes through alternative dispute resolution.
- c) Undertake and promote research in the field of legal aid, and access to justice with special reference to the need for legal aid services among indigent persons and marginalized groups.
- d) Take necessary steps to promote public interest litigation with regard to consumer protection, environmental protection and any other matter of special concern to the marginalized groups.
- e) Provide grants in aid for specific schemes to various voluntary social service institutions, for the implementation of legal aid services under this Act.
- f) Develop and issue guidelines and standards for the establishment of legal aid schemes by Non-Governmental Agencies.
- g) In consultation with the Council of Legal Education, develop programs for legal aid education and the training and certification of paralegals.
- h) Promote, and supervise the establishment and working of legal aid services in universities, colleges and other institutions.
- i) Take appropriate measures to promote legal literacy and legal awareness among the public and in particular, educate vulnerable sections of the society on their rights and duties under the Constitution and other laws.
- j) Establish, coordinate, monitor and evaluate justice advisory centers.
- k) Coordinate, monitor and evaluate paralegals and other legal service providers and give general directions for the proper implementation of legal aid programs.
- l) Administer and manage the Legal Aid Fund.

The registration or accreditation of Paralegals and LAPs under Kenyan law have reflected a need to ‘facilitate’ and merely control them as it is a case for Tanzanian legal aid law, which is considered by some of the stakeholders as having unnecessary restrictions or limitation in the registration or accreditation of some of the CSOs in Tanzania – despite the nature of their work and financial capacity.

That is particularly a case when it comes to the registration of legal aid service providers (LAPs). The registration of LAPs is now governed by the Legal Aid Act of 2007. The law came into being after decades of struggles to formalize Paralegal services in the country. Therefore, having this law is regarded as a huge mileage towards improved access to justice in Tanzania.

Section 10 of the Legal Aid Act of 2017 provides for the qualifications for registration as LAP. Sub-section 1 states that:-

*“...an institution shall not be registered as a legal aid provider unless it has the following qualifications; (a) it has been registered under the relevant laws; (b) the provision of legal aid services is one of its core functions; (c) it has office premises and office facilities; (d) it has not less than two advocates, one advocate and one lawyer, one lawyer and two paralegals, one advocate and two paralegals or three paralegals; and, (e) it has been cleared by the body that has registered it as to its records pertaining to management of finances...”*

Such requirements are important in order to formalize legal aid service provision in the country. However, the law does not consider the reality on the ground that, some of the LAPs have been operating for years without being funded. Therefore, they meet all qualifications stated above but lack financial component of it as they have never received any fund. A better way could have been to allow provisional registration as the organizations continue striving to secure funds. There are also individual persons or loose CSOs providing excellent legal aid services on the ground which operates without being affiliated to any formal CSOs. Examples of such individuals or organizations are HRDs. Therefore, the registration requirements were ought to have taken to consideration all these exception circumstances in order to widen legal aid representations.

The Tanzanian Legal Aid Act of 2017 needs some reforms in terms of institutionalization of LAS and support of LAPs as it is a Kenyan side. The organ established under the Tanzanian law should be given more mandates for them to be more meaningful to LAS in the country. Moreover, there is a dire need to establish the National Legal Aid Fund in order to support LAPs especially paralegals who are struggling to fundraise for their services to the poor. The way it is now offers only one advantage for which CSOs fought for it in years – which is formalization of paralegals. Otherwise, the rest of (institutional and operational) challenges facing LAPs have remained the same, and may be on increase due to current funding problems. The subsequent section of this chapter highlights some practical challenges providing LAS in Tanzania.



### 6.3 PRACTICAL CHALLENGES FACING LAPs' IN TANZANIA

There are numerous challenges facing LAPs (including paralegals) in Tanzania Mainland. The challenges can be grouped into three broad terms, namely legal challenges; institutional challenges; and, operational challenges. Some of these have already been discussed elsewhere in this compendium.

The legal challenge as it has been enlightened above includes lack of adequate statutory support to LAPs and paralegals apart from being registered and regulated. The desired or proposed statutory support is like what Section 29 of the Kenyan legal aid law has provided e.g establishing the national fund for LAPs which receive public funds and coordinate disbursement of the grants to LAPs. Other challenges include complicated registration procedures of LAPs as discussed earlier.

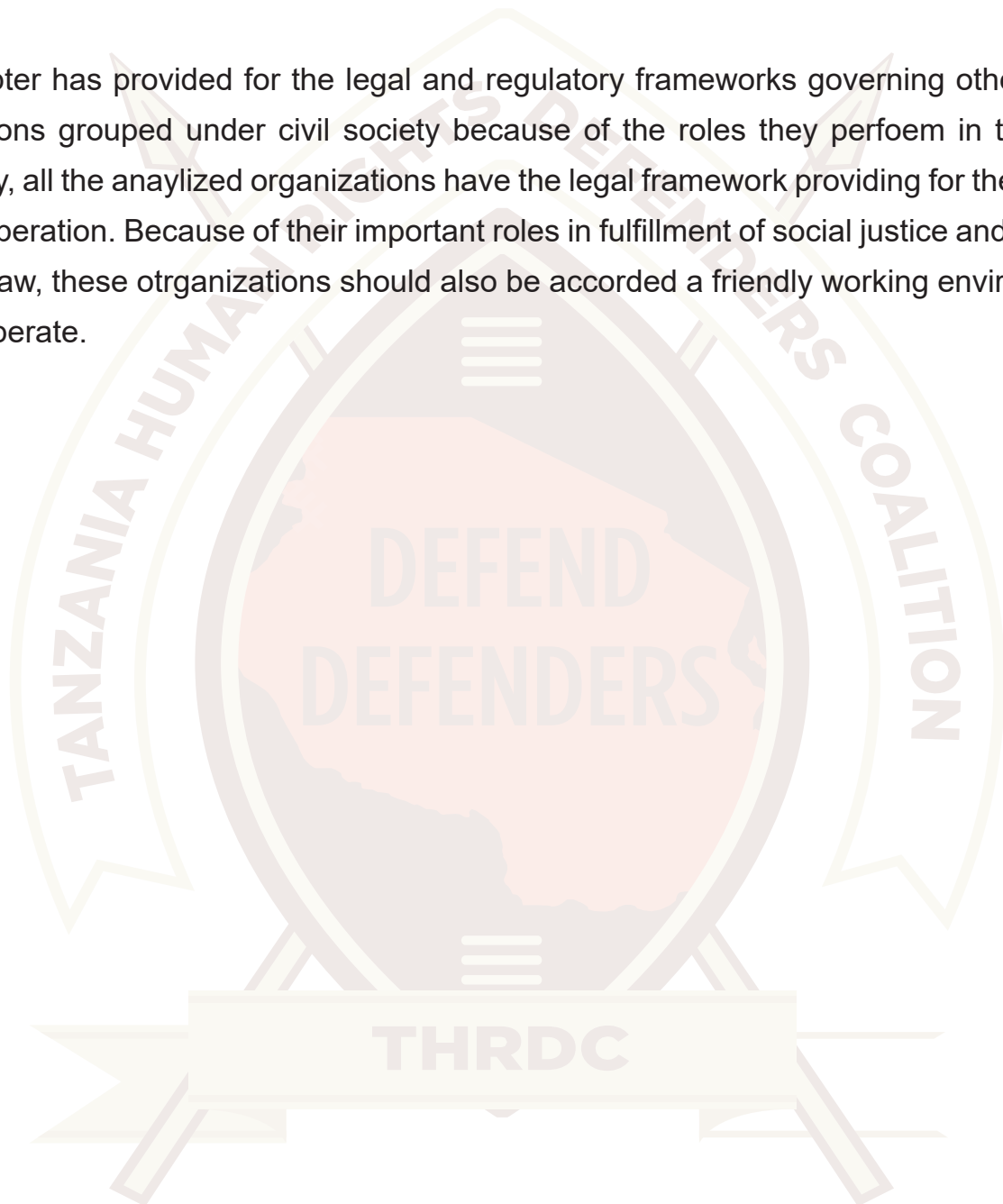
The institutional challenges are more internal issues especially management and governance as well as financial resources. Most of the LAPs and paralegals are overwhelmed with high demands of LAS while their resources and other capacities are relatively low. The experience has shown that, almost all funding partners do not offer grants for LAS; instead, preferring other advocacy interventions. Apart from the FCS; and, the Legal Service Facility (LSF) of Tanzania, LAPs do not, generally, receive funds from other sources. This is why national fund for LAS is imperative as suggested earlier. Secondly, LAPs like other CSOs face challenges of malpractices of some of its leaders and, there is no strong CSOs' self-regulatory mechanisms as discussed earlier in other chapters.

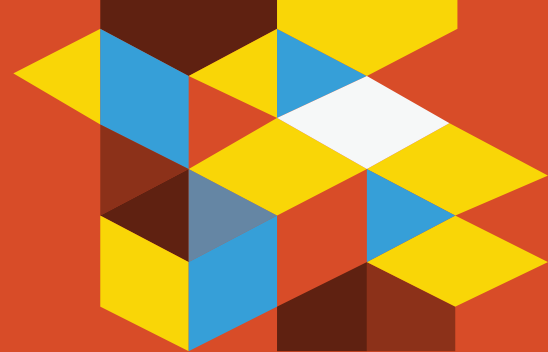
The operational challenges are similar to institutional ones. In addition to those, there is generally insufficient working relationship between LAPs and other stakeholders on the grounds including TLS and LGAs. As said earlier, TLS has regional branches throughout the country which would have been linked with other LAPs in the vicinities – if those branches/chapters were well institutionalized and that, LAPs and TLS had formal platforms of working together. The LGAs generally lack budgetary lines and support to CSOs. They could offer loan only to income generating activities groups of women, youth and persons with disabilities (PWDs).

This is notwithstanding the fact that, Social Welfare Officers (SWOs) employed by LGAs do offer some legal supports. Moreover, the established Child Protection Teams and Gender Based Violence Committees as well as One Stop Centers (OSC) have all not considered mandatory inclusion of LAPs/ CSOs in their functions. All these were mechanisms which the law ought to have promoted in the like of Kenyan one as explained above.

## 6.4 Conclusion

This Chapter has provided for the legal and regulatory frameworks governing other selected organizations grouped under civil society because of the roles they perform in the society. Essentially, all the analyzed organizations have the legal framework providing for their registration and operation. Because of their important roles in fulfillment of social justice and promotion of rule of law, these organizations should also be accorded a friendly working environment for them to operate.





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## The International Legal Framework for Civil Society Organisations

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(ii) Convention on the Rights of the Child (CRC), 1989

(iii) Convention Against Torture (CAT)

(iv) ILO Convention on Freedom of Association (No. 87 of 1948)

(v) International Covenant on Civil and Political Rights (ICCPR), 1966

(vi) International Covenant on Economic Social and Cultural Rights (ICESCR), 1966

(vii) International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965

(viii) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)

(ix) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)

(x) Universal Declaration of Human Rights (UDHR) 1948

(xi) United Nations Convention Against Corruption, 2004

(xii) Vienna Convention on the Law of Treaties 1069



## Legal framework for Registration, Operation and Regulation of CSOs in Tanzania

- (i) Legal Aid Act (2017)
- (ii) National Sports Council Act, Cap 49 [R.E 2002]
- (iii) Societies Act (2003)
- (iv) The Cooperative Societies Act (2013)
- (v) The Companies Act (2006)
- (vi) The Non-Governmental Organizations Act (2002)
- (vii) The Tanganyika Law Society Act Cap 307
- (viii) The Trade Union Act 1871; The Para-legal Act (2017)
- (ix) The Trustees Incorporation Act (RE: 2002)

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- (i) Environmental Management Act, 2004
- (ii) The Courts (Land Disputes Settlements) Act ( 2002)
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- (ii) Income Tax Act (RE: 2008)
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- (iv) Tanzania Revenue Authority Act (1996)
- (v) The Stamp Duty Act (RE: 2006)
- (vi) The Value Added Tax Act (2014)

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- (i) HIV/AIDS Prevention and Control Act (2008)
- (ii) The Employment and Labour Relations Act (2004)- ELRA
- (iii) The Occupational Health and Safety Act (2003)
- (iv) The Workers' Compensation Act (RE: 2015)

### **Immigration Laws**

- (i) The Immigration Act (1995)
- (ii) The Non-Citizens (Employment Regulations) Act, 2016

### **Criminal /Penal Laws**

- (i) Anti-Trafficking in Persons Act, 2008
- (ii) Economic and Organised Crimes Control Act 1984 (Cap 200 R.E 2002)
- (iii) National Defence Act, (Cap. 192 R.E. 2002)
- (iv) Proceeds of Crime Act [R.E 2002]
- (v) Tanzania Penal Code, (Cap 16 R.E 2009)
- (vi) The Anti-Money Laundering Act (Cap 423 2012)
- (vii) The Drugs and Prevention of Illicit Traffic in Drugs Act, 1995
- (viii) The Police Force and Auxiliary Services Act (Cap 322 R.E)
- (ix) The Prevention and Combating of Corruption Act, No. 11 of 2007 (Cap 329)
- (x) The Prevention of Terrorism Act, 2002
- (xi) The Statistics Act (2015)
- (xii) The Tanzania Commission for Science and Technology Act,1986 (COSTECH ACT)
- (xiii) The Tanzania Communications Regulatory Authority Act (2003)

### **The legal framework for Research and Publications**

- i. Records and Archives Management Act, 2002
- ii. The Access to Information Act, 2015.
- iii. The Copyright and Neighbouring Rights Act, 1999
- iv. The Cybercrimes Act 2015
- v. The Media Services Act, 2015
- vi. The National Research and Development Policy 2010
- vii. The NIMR Parliamentary Act No. 23 of 1979

## Regulations

- (i) Electronic and Postal Communications (Online Content) Regulations of 2017.
- (ii) National Research Registration and Clearance Guidelines of 2018.
- (iii) Non-Governmental Organizations (Amendments) Regulations of 2018 (G.N No. 609/ 2018).
- (iv) Non-Governmental Organizations Regulations of 2004 (G.N No. 152/ 2004).
- (v) Statistics Regulations of 2017.
- (vi) The Non-Governmental Organizations Regulations of 2004 (G.N No. 152/ 2004), which is made under Section 38 of the NGOs Act of 2002.
- (vii) The Written Laws (Miscellaneous Amendments) Act No. 11 of 2005.
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